

EXHIBIT M

VIDEO TELECONFERENCE DEPOSITION
CHRISTOPHER RAYMOND JARVIS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. JOHN A. REPICCI, LORRAINE REPICCI,
Individually and JULIE STONE as Trustee
of THE JOHN A. REPICCI IRREVOCABLE LIFE
INSURANCE TRUST AND THE REPICCI IRREVOCABLE
FAMILY TRUST,

Plaintiffs,

- vs - Index Number
17-CV-132-WMS-MJR

CHRISTOPHER R. JARVIS and
OJM GROUP, LLC,

Defendants.

Video teleconference deposition of
CHRISTOPHER RAYMOND JARVIS, Defendant, present at
2350 Global Drive, DFW Airport, Texas, taken
pursuant to the Federal Rules of Civil Procedure,
connecting to various locations on October 7, 2021,
commencing at 10:20 a.m., before DANIELLE M.
FETZER, Notary Public.

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10:19:49 **1 THE REPORTER:** Counsel, because the witness
2 is not physically in my presence, pursuant to NY
3 CPLR 3113(d), do you stipulate that I can swear in
4 the witness remotely?
5 In addition, can counsel representing the
10:20:20 **6** witness confirm the identity of the witness?
10:20:20 **7 MR. TRACY:** Yes, and I want to identify the
10:20:25 **8** identity of the witness here as Christopher Jarvis.
10:20:29 **9 THE REPORTER:** Thank you. And are there any
10:20:33 **10** stipulations?
10:20:35 **11 MR. TRACY:** Just usual.
10:20:35 **12 MR. MOORE:** Usual.
13
14 CHRISTOPHER RAYMOND JARVIS, 289 Pine Drive,
15 Southlake, Texas 76092, pursuant to NY CPLR
16 3113(d), was duly called and sworn after
17 stipulation by counsel, testified via video
10:21:57 **18** conference as follows:
19 EXAMINATION
20 BY MR. MOORE:
10:22:02 **21 Q.** Mr. Jarvis, my name is Richard Moore;
10:22:05 **22** I'm counsel for the plaintiffs in this matter. I'm
10:22:09 **23** counsel for Magavern, Magavern & Grimm in Buffalo.
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1 APPEARANCES: MAGAVERN MAGAVERN GRIMM LLP,
2 By RICHARD A. MOORE, ESQ.,
3 1100 Rand Building,
4 14 Lafayette Square,
5 Buffalo, New York 14203,
6 (716) 856-3500,
7 rmoore@magavern.com,
8 Appearing for the Plaintiffs,
9 via Zoom.
10 WINGET SPADAFORA SCHWARTZBERG,
11 By MATTHEW TRACY, ESQ.,
12 45 Broadway, 32nd Floor,
13 New York, New York 10006,
14 (212) 221-6900,
15 tracy.m@wssllp.com,
16 Appearing for the Defendant,
17 Christopher R. Jarvis,
18 via Zoom.

11 PRESENT
12 VIA ZOOM: CASEY REVKIN,
13 Principal of Policy Guard, LLC
14
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10:22:12 **1** Let me ask you this: Have you ever been
10:22:14 **2** deposed before?
10:22:14 **3 A. I have.**
10:22:14 **4 Q.** Okay. And how many times would you
10:22:17 **5** say, approximately?
10:22:17 **6 A. Two or three.**
10:22:19 **7 Q.** Okay. So I'm not going to go into
10:22:24 **8** detail, but I would just ask that if you don't
10:22:26 **9** understand any of my questions, please stop me and
10:22:29 **10** make sure you do understand what I'm asking.
10:22:33 **11** If -- I would appreciate if you could speak
10:22:38 **12** clearly in terms of yeses or nos instead of nods or
10:22:42 **13** other manners. And, again, the important thing is
10:22:46 **14** if you don't understand a question, let me know.
10:22:48 **15** If you need to take a break for any reason
10:22:52 **16** whatsoever, please let me know and we'll take a
17 break.
10:22:52 **18** Do you have any questions at all for me?
10:22:53 **19 A. I do not.**
10:22:54 **20 Q.** Okay. Very good. Can you just give us
10:23:00 **21** briefly your educational background?
10:23:01 **22 A. Educational background, I have a**
10:23:04 **23 bachelor's of science in applied mathematics from**
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10:23:08 **1 the University of Rhode Island and I have a**
 10:23:11 **2 master's in business administration from UCLA.**
 10:23:15 **3 That's my educational ...**
 10:23:17 **4 Q.** Okay. And can you give me your work
 10:23:21 **5 experience subsequent to college?**
 10:23:23 **6 A. After college?**
 10:23:24 **7 Q.** Since your master's.
 10:23:26 **8 A. Since the master's, started a company,**
 10:23:29 **9 Guardian Publishing. While I was in business**
 10:23:33 **10 school, started a firm called Jarvis & Mandell,**
 10:23:39 **11 M-A-N-D-E-L-L, which was a consulting firm.**
 10:23:43 **12 Q.** Can you tell us what type of consulting
 10:23:46 **13 firm?**
 10:23:46 **14 A. Sure. Consulting, we did financial**
 10:23:48 **15 consulting, business consulting for a variety of**
 10:23:52 **16 clients, predominantly physicians. We subsequently**
 10:23:59 **17 merged with another gentleman who started a firm,**
 10:24:05 **18 OJM, OJM Group, in 2007.**
 10:24:11 **19 I left there in 2010, early -- end of 2009,**
 10:24:17 **20 maybe, started -- two years off, started a new firm**
 10:24:22 **21 in 2011, which was Jade, J-A-D-E, Risk, sold that**
 10:24:30 **22 firm in 2016, and I've been working independently**
 10:24:38 **23 since 2017.**

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10:24:39 **1 Q.** Could you tell me what time you started
 10:24:44 **2 Jarvis & Mandell?**
 10:24:45 **3 A. Jarvis & Mandell started somewhere in**
 10:24:49 **4 1997.**
 10:24:53 **5 Q.** And OJM Group, can you tell me what
 10:24:56 **6 type of business that was?**
 10:24:59 **7 A. OJM Group was -- they're still**
 10:25:03 **8 operating -- a registered investment advisory firm**
 10:25:06 **9 specializing in financial solutions for physicians,**
 10:25:16 **10 not exclusively, but specializing in, headquartered**
 10:25:22 **11 in Cincinnati.**
 10:25:25 **12 Q.** And can you tell me what the -- what
 10:25:31 **13 was Jade Risk's involvement?**
 10:25:32 **14 A. Jade Risk was a licensed insurance**
 10:25:35 **15 agency and it also did Captive Management, so it**
 10:25:39 **16 provided Captive, C-A-P-T-I-V-E, Management**
 10:25:43 **17 solutions for small insurance companies.**
 10:25:48 **18 Q.** Do you have any certifications beyond
 10:25:53 **19 your MBA?**
 10:25:56 **20 A. Yes, I have active insurance licenses**
 10:26:01 **21 in multiple states and I'm a certified financial**
 10:26:09 **22 planner, certificant, which is the proper language,**
 10:26:11 **23 and I received that in 2011.**

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10:26:15 **1 Q.** The -- did you -- my understanding is
 10:26:22 **2 you had published quite a few publications. Can**
 10:26:29 **3 you -- let me show you what's been marked as**
 10:26:32 **4 Exhibit 1, and if you can identify on Exhibit 1 any**
 10:26:42 **5 of the publications in which you are the author or**
 10:26:46 **6 co-author of?**
 10:26:46 **7 A. Sure. Wealth Secrets of the Affluent;**
 10:26:51 **8 Doctor's Wealth Protection Guide; For California**
 10:26:57 **9 Doctors; For New York Doctors; For Ohio Doctors;**
 10:27:03 **10 The Physician's Money Manual; Wealth Protection;**
 10:27:13 **11 Wealth Protection MD; For Doctors Only; Managing**
 10:27:20 **12 Risk, and there's a handful of others, too.**
 10:27:24 **13 Q.** Okay. Would you be able to provide us
 10:27:27 **14 with a list of all your publications at some point?**
 10:27:31 **15 A. I can now if you'd like.**
 10:27:32 **16 Q.** Sure.
 10:27:33 **17 A. So the ones that are missing are For**
 10:27:35 **18 Georgia Doctors, there's Giraffe Money, 6 Secrets**
 10:27:48 **19 to Leveraging Success.**
 10:27:50 **20 Q.** Okay.
 10:27:50 **21 A. Risk Management For the Practicing**
 10:27:52 **22 Physician. How many do you have now? Oh, and**
 10:27:59 **23 Mastering the Art of Success.**

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10:28:02 **1 Q.** And can you tell which of these books
 10:28:05 **2 were published prior to 2006?**
 10:28:08 **3 A. Prior to 2006, The Doctor's Wealth**
 10:28:14 **4 Protection Guide; the four state books, California**
 10:28:19 **5 Doctors; For Ohio; For New York, and for Georgia**
 10:28:23 **6 Doctors were all before 2006.**
 10:28:25 **7 Wealth Protection and Wealth -- Wealth**
 10:28:33 **8 Protection definitely was -- let's see -- that was**
 10:28:36 **9 2002, Wealth Protection MD. I think that's it.**
 10:28:47 **10 Q.** And of all these books published prior
 10:28:52 **11 to 2006, the ones you've listed, were you involved**
 10:28:58 **12 in Jarvis & Mandell during the time in which you**
 10:29:01 **13 published each of these?**
 10:29:03 **14 A. Yes.**
 10:29:03 **15 Q.** Okay. And were those -- were those
 10:29:05 **16 publications used directly for the purposes of the**
 10:29:09 **17 business Jarvis & Mandell?**
 10:29:12 **18 A. Can you be more specific?**
 10:29:14 **19 Q.** Yes. Let's -- were those -- did you
 10:29:16 **20 have any business activities independent of**
 10:29:20 **21 Jarvis & Mandell once you formed that entity?**
 10:29:37 **22 A. Yes. So Guardian Publishing, so we**
 10:29:43 **23 wrote public books and Guardian would also promote**

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10:29:49 **1 us as speakers to conferences and we wouldn't seek**
 10:29:52 **2 speaking fees or other ...**
 10:29:53 **3 Q.** When you -- can you tell me a little
 10:29:55 **4 bit more about Guardian Publishing? Were you an**
 10:29:58 **5 owner?**
 10:29:59 **6 A. I was.**
 10:29:59 **7 Q.** Okay. And were there any other owners?
 10:30:02 **8 A. David Mandell.**
 10:30:03 **9 Q.** Okay. And so can you explain to me in
 10:30:06 **10 more detail what Guardian Publishing did as opposed**
 10:30:11 **11 to what Jarvis & Mandell did?**
 10:30:11 **12 A. So Guardian Publishing would publish**
 10:30:14 **13 books, promote outside speakers, the two authors**
 10:30:19 **14 and partners as speakers, so we'd receive royalties**
 10:30:24 **15 on books, we would receive speaking fees on**
 10:30:28 **16 variance.**
 10:30:28 **17 So separation between the two entities was**
 10:30:31 **18 Guardian did writing, speaking, and handle**
 10:30:38 **19 educational-type services, and Jarvis & Mandell**
 10:30:41 **20 provided consulting.**
 10:30:42 **21 Q.** And that would be financial consulting
 10:30:45 **22 services, correct?**
 10:30:46 **23 A. Yes.**

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10:30:46 **1 Q.** Okay. Now, do I understand that during
 10:30:52 **2 the period that you were working with Jarvis &**
 10:30:56 **3 Mandell that you were involved in speaking --**
 10:31:02 **4 speaking tours with Jarvis & Mandell, with those**
 10:31:08 **5 tours or those engagements, was that primarily**
 10:31:09 **6 focused on physicians?**
 10:31:10 **7 A. Primarily, yes.**
 10:31:11 **8 Q.** Okay. And can you tell me what the
 10:31:13 **9 nature of those -- what those events were?**
 10:31:19 **10 A. So probably spoke at 100 medical**
 10:31:24 **11 societies and hospitals over a 10 to 15-year**
 10:31:27 **12 period -- 10 to 12-year period. Topics would vary**
 10:31:35 **13 based on what the medical societies and their**
 10:31:37 **14 members were interested in. So it could be asset**
 10:31:40 **15 protection, it could be the physician as a business**
 10:31:42 **16 owner, it could be anything financial or legal**
 10:31:47 **17 related that they thought was interesting.**
 10:31:50 **18 Q.** And if I understand you, the point of
 10:31:53 **19 that was to incur business with Jarvis & Mandell in**
 10:31:56 **20 providing financial consulting services?**
 10:31:58 **21 A. When you're working with medical**
 10:32:04 **22 societies, you have pharmaceutical companies**
 10:32:08 **23 sponsoring you to teach. There's a great deal of**

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10:32:09 **1 conflicts that you have to manage and they were**
 10:32:11 **2 very much not about promoting what we did.**
 10:32:12 **3 So we did it as an educational thing, which**
 10:32:16 **4 built credibility. People in the audience would**
 10:32:18 **5 often call us.**
 10:32:19 **6 So we did get clients out of it for sure,**
 10:32:21 **7 but the goal -- Guardian wanted to get paid for us**
 10:32:25 **8 to speak as an educational thing, but clients**
 10:32:27 **9 certainly came out of it. So ...**
 10:32:28 **10 BY MR. MOORE:**
 10:32:28 **11 Q.** Did you ever encourage clients to
 10:32:31 **12 contact you -- potential clients to contact you?**
 10:32:33 **13 A. We would invite people to. So ...**
 10:32:36 **14 Q.** Can you tell us how you first came in
 10:32:42 **15 contact with Dr. Repicci, the plaintiff?**
 10:32:44 **16 A. I was in our offices in Westwood, which**
 10:32:48 **17 was my apartment at the time, the phone rang, and I**
 10:32:51 **18 remember the conversation pretty well.**
 10:32:54 **19 I picked up the phone, gentleman asked to**
 10:33:00 **20 speak to David Mandell or Chris Jarvis. I said**
 10:33:03 **21 speaking.**
 10:33:04 **22 He said, I'm John Repicci, I'm an orthopedic**
 10:33:07 **23 surgeon in Buffalo, New York, and he said something**

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10:33:10 **1 very funny, like I'm a fool, or I'm an idiot, or**
 10:33:13 **2 something very playful and silly, but negative.**
 10:33:16 **3 And I said, John, nice to meet you, I'm sure**
 10:33:21 **4 you're neither of those things, but why do you**
 10:33:23 **5 think that?**
 10:33:23 **6 And John's response was: I read an article**
 10:33:27 **7 about you three or four years ago in a medical**
 10:33:30 **8 journal, and then I went around for three years**
 10:33:33 **9 trying to find people to help me solve the problem**
 10:33:35 **10 that you presented in the article, and then I just**
 10:33:37 **11 recently saw your name again and thought, good God,**
 10:33:40 **12 why don't I just call the guy who wrote the article**
 10:33:43 **13 instead of wasting years trying to do the things**
 10:33:43 **14 that you told me to -- that I read and thought was**
 10:33:43 **15 a good solution.**
 10:33:49 **16 So that was the first of well over 100 phone**
 10:33:53 **17 calls that I've had with John over the years, and**
 10:33:56 **18 it started rather playfully and fun until very**
 10:34:00 **19 recently all the conversations weren't.**
 10:34:01 **20 Q.** All right. Do you recall him attending
 10:34:02 **21 any of your events or conferences?**
 10:34:05 **22 A. No, John and I -- John -- as far as I**
 10:34:09 **23 know, John has never seen me speak or attended a**

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10:34:15 **1 conference that I spoke.**
 10:34:17 **2 I didn't meet John until, gosh, five,**
 10:34:20 **3 seven years after we started working together. He**
 10:34:22 **4 was out in California for a conference, and he was**
 10:34:23 **5 also seeing his son Tom at the time, I think, who**
 10:34:26 **6 lived there, and we met for lunch, but we hadn't --**
 10:34:32 **7 he may have met Dave Mandell, my partner, at some**
 10:34:34 **8 point, but we worked together without having met in**
 10:34:37 **9 person.**
 10:34:37 **10 Q.** At any point do you recall sending him
 10:34:40 one of your publications or handing him one of your
 10:34:43 **12 publications?**
 10:34:44 **13 A.** I don't remember handing him one, but
 10:34:47 **14 would I have sent him a copy? Very possibly. He**
 10:34:51 **15 may have bought one. I don't remember.**
 10:34:52 **16 Q.** Do you have any more specific
 10:34:54 **17 recollection of that? Do you recall if you did**
 10:34:58 **18 present him in any way with it?**
 10:35:00 **19 A.** I do not recall.
 10:35:00 **20 Q.** Okay. And what -- and the conversation
 10:35:09 **21 you had with Dr. Repicci, did that lead to any kind**
 10:35:18 **22 of business engagement?**
 10:35:19 **23 A.** We definitely worked together on a
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10:35:22 **1 number of things, whether we had an engagement --**
 10:35:27 **2 stated engagement, we may have had one, I honestly**
 10:35:31 **3 don't remember if it was something.**
 10:35:32 **4 Q.** Do you recall if you did any financial
 10:35:35 **5 consulting or planning with Dr. Repicci?**
 10:35:37 **6 A.** I definitely -- definitely did.
 10:35:38 **7 MR. TRACY:** Object to the form.
 10:35:39 **8 THE WITNESS:** I do remember talking to John
 10:35:41 **9 about financial insurance, tax matters. I do**
 10:35:44 **10 remember working with Nick, Hy Polakoff, Celia**
 10:35:48 **11 Clark, Dave Mandell, DeMatteo, and I do -- I did**
 10:35:51 **12 get involved in selling insurance to John and Lori**
 10:35:54 **13 and working with Julie.**
 10:35:55 **14 So we absolutely had a relationship that**
 10:35:58 **15 involved financial products, and that was working**
 10:36:00 **16 together over the years.**
 10:36:01 **17 BY MR. MOORE:**
 10:36:03 **18 Q.** Okay. Let me show you what's been
 10:36:05 **19 marked as Plaintiff's Exhibit Number 2. Please**
 10:36:19 **20 review the document, if you could.**
 10:36:53 **21 A.** Okay. I read the letter.
 10:36:55 **22 Q.** Okay. And you're familiar with that?
 10:36:56 **23 A.** Yes.
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10:36:56 **1 Q.** Okay. And can you tell -- briefly
 10:37:00 **2 describe what this letter is about.**
 10:37:03 **3 A.** We had been working together for a
 10:37:05 **4 while, a great deal of phone calls with him, with**
 10:37:23 **5 Hy Polakoff, his accountant at the time, and may**
 10:37:26 **6 have involved an attorney in New York, Celia,**
 10:37:29 **7 C-E-L-I-A, Clark, C-L-A-R-K, and David Mandell, and**
 10:37:33 **8 we had been talking about ways to -- alternative**
 10:37:41 **9 ways to invest his retirement funds that would**
 10:37:43 **10 reduce taxes on his death.**
 10:37:46 **11 John had hired us, asked us to help him with**
 10:37:50 **12 money in his retirement plan. As he put it, he was**
 10:37:54 **13 an orthopedic surgeon making seven figures, doing**
 10:37:57 **14 very well, plus he had invented the Repicci knee,**
 10:38:04 **15 had made millions of dollars in patent income.**
 10:38:07 **16 He lived in Buffalo, which was a very**
 10:38:09 **17 inexpensive place to live, and as a result, he had**
 10:38:11 **18 plenty of money. He wasn't going to need this**
 10:38:12 **19 money to live, he wanted to leave it to kids and**
 10:38:15 **20 future grandkids, and if there was a way to reduce**
 10:38:18 **21 the taxes on that money, he was interested.**
 10:38:20 **22 So he asked us to look into ways to reduce**
 10:38:24 **23 the tax on his retirement plan, and we talked about**
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10:38:27 **1 that dozens of times.**
 10:38:29 **2 And so this is the letter talking about what**
 10:38:33 **3 we're trying to accomplish and giving him an update**
 10:38:37 **4 as to how far the underwriting -- the solution that**
 10:38:40 **5 we presented involved insurance and we were giving**
 10:38:45 **6 him an update as to the underwriting, which had**
 10:38:50 **7 taken a while and was a little bit difficult.**
 10:38:51 **8 Q.** Okay. Let me show you what's been
 10:38:56 **9 marked as Plaintiff's Exhibit Number 3. Are you**
 10:39:04 **10 familiar with this?**
 10:39:06 **11 A.** I am.
 10:39:07 **12 Q.** Do these documents provide further
 10:39:12 **13 explanation of the plan that you just discussed?**
 10:39:14 **14 A.** Yes.
 10:39:14 **15 Q.** And very -- in as simplistic of terms
 10:39:21 **16 as possible, can you explain how -- what the plan**
 10:39:24 **17 was and how it worked?**
 10:39:25 **18 A.** Sure. John had \$4 million in his
 10:39:28 **19 retirement plan -- in his retirement accounts, and**
 10:39:34 **20 that money was going to be taxed. It was going to**
 10:39:38 **21 be taxed for state taxes and for income taxes when**
 10:39:42 **22 he left it to his kids.**
 10:39:44 **23 So at the time, the exemption amount for a**
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10:39:46 **1 family was only \$600,000, I think. Today, it's**
 10:39:49 **2 11 million per person.**
 10:39:50 **3 So John didn't need the money, he wanted to**
 10:39:53 **4 give it to his kids. He didn't like the idea of**
 10:39:57 **5 losing 80 percent of it to tax.**
 10:39:59 **6 So at the time, life insurance policies**
 10:40:01 **7 purchased in a retirement plan could be purchased**
 10:40:05 **8 with pre-tax dollars. They could subsequently be**
 10:40:08 **9 distributed or purchased.**
 10:40:09 **10 And what John was excited about was the fact**
 10:40:13 **11 that when cash leaves a retirement plan, it's taxed**
 10:40:16 **12 for what it is. If you take \$1 million out, it**
 10:40:18 **13 taxes \$1 million, but if you were to distribute a**
 10:40:22 **14 life insurance policy out of the retirement plan,**
 10:40:22 **15 the valuation for tax purposes is significantly**
 10:40:25 **16 less.**
 10:40:26 **17 At the time, it was -- we were drifting**
 10:40:28 **18 around 40 percent. So this idea was let's**
 10:40:34 **19 recharacterize the assets inside your retirement**
 10:40:37 **20 accounts to give or remove them, and save taxes on**
 10:40:41 **21 60 percent of your \$4 million.**
 10:40:43 **22 So this plan was how do we take money you**
 10:40:46 **23 don't need, eliminate tax, unnecessary tax, and**
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10:40:50 **1 leave a substantial amount more to your kids than**
 10:40:53 **2 if you just let it grow in your IRA.**
 10:40:56 **3 Q. Would you describe this as a reasonably**
 10:41:14 **4 sophisticated plan?**
 10:41:15 **5 A. Relative to what, I guess? That's**
 10:41:19 **6 the --**
 10:41:19 **7 Q. Well, let me put it this way: Is this**
 10:41:24 **8 the sort of thing that you could walk into an**
 10:41:27 **9 insurance brokerage anywhere in the country and**
 10:41:30 **10 expect the same type of plan?**
 10:41:31 **11 A. Could I expect any insurance agent to**
 10:41:36 **12 know how to do this well? No, because we're**
 10:41:41 **13 talking about people with substantial amounts of**
 10:41:45 **14 money in their retirement plans and it's money they**
 10:41:49 **15 don't need, and certainly the majority of people in**
 10:41:52 **16 America don't have money far beyond what they need**
 10:41:53 **17 to live on.**
 10:41:54 **18 So I don't know, 1 percent, one-tenth of**
 10:41:58 **19 1 percent of people actually need to do this. So I**
 10:42:01 **20 would not expect the average insurance agent to**
 10:42:05 **21 know how to do this.**
 10:42:05 **22 Q. As I understand, at one point in the**
 10:42:09 **23 plan -- strike that.**
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10:42:13 **1 Looking at this exhibit, the first page of**
 10:42:16 **2 it, Bates number 21, it mentions the IRA at the top**
 10:42:24 **3 and then it mentions two life insurance policies,**
 10:42:27 **4 one being MassMutual, 17,500,000 or I believe --**
 10:42:33 **5 A. The second one is --**
 10:42:34 **6 Q. 17,500,000?**
 10:42:37 **7 A. Yes.**
 10:42:37 **8 Q. And then a Lincoln Life policy of**
 10:42:40 **9 25 million?**
 10:42:40 **10 A. Correct.**
 10:42:40 **11 Q. Were those the face values originally**
 10:42:44 **12 purchased for each of those insurances?**
 10:42:44 **13 A. Those were the original death benefit**
 10:42:47 **14 amounts of those two policies, correct.**
 10:42:49 **15 Q. Okay. And at some point did the death**
 10:42:50 **16 benefit get reduced on those policies?**
 10:42:52 **17 A. It did.**
 10:42:53 **18 Q. And why was that done?**
 10:42:55 **19 A. So a couple of things, the original**
 10:42:57 **20 purchase, the original -- the original purchase**
 10:43:02 **21 anticipated the premiums that are on the fourth**
 10:43:06 **22 column here, \$400,000 per year for three years into**
 10:43:10 **23 the MassMutual policy, \$600,000 a year for three**
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10:43:15 **1 years into the Lincoln policy. These premiums**
 10:43:17 **2 weren't made, so they didn't make as much of a**
 10:43:21 **3 premium as they originally had intended, so that**
 10:43:22 **4 was -- that was part of this.**
 10:43:23 **5 So the policies were -- we would not have**
 10:43:30 **6 been able to keep the policy death benefit amounts**
 10:43:32 **7 at that level for their lifetimes if we kept them**
 10:43:34 **8 there.**
 10:43:34 **9 So we started at a high number, a higher**
 10:43:38 **10 number we had -- a higher the death benefit number,**
 10:43:42 **11 the lower the value for distribution, which might**
 10:43:46 **12 seem counterintuitive, but if we had bought less**
 10:43:52 **13 death benefit, the value in distribution would have**
 10:43:54 **14 been considerably higher and it would have meant**
 10:43:56 **15 more tax.**
 10:43:56 **16 So this was a balancing act of how do we**
 10:43:58 **17 eliminate tax, as much tax as possible, with**
 10:44:06 **18 preserving as much cash value as possible.**
 10:44:09 **19 Q. Let me talk specifically with regard to**
 10:44:14 **20 the MassMutual policy. It was -- the original face**
 10:44:20 **21 value was 17,500,000. Did I understand you to say**
 10:44:24 **22 it had originally intended distributions of**
 10:44:27 **23 \$400,000 for each of the first three years, and**
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10:44:30 1 that had led to continued value of the policy at
 10:44:36 2 17,500,000?
 10:44:37 3 **A. No, they -- it was premium, not**
 10:44:41 4 **distributions. So the original illustration was**
 10:44:43 5 **premiums of 400,000 for year.**
 10:44:46 6 **So you buy a larger death benefit early,**
 10:44:51 7 **create significant surrender charges in the policy,**
 10:44:51 8 **which would decrease the value upon distribution,**
 10:44:54 9 **pay lower tax, reduce the death benefit, and**
 10:44:59 10 **preserve the reigning death benefit for as long as**
 10:45:01 11 **possible.**
 10:45:01 12 **Q.** Okay. So the intention is at some
 10:45:04 13 point down the line, my understanding is that in
 10:45:05 14 two to three years down the line to significantly
 10:45:09 15 reduce the coverage of the policy amount, but at
 10:45:15 16 that point, it's preserved; is that a fair
 10:45:18 17 statement?
 10:45:18 18 **MR. TRACY:** Object to the form.
 10:45:19 19 **THE WITNESS:** What's -- the higher the cash
 10:45:25 20 value, the larger the -- I'm sorry. The higher the
 10:45:28 21 death benefit amount, the larger the cost of the
 10:45:30 22 policy we administer.
 10:45:31 23 So if we kept the policy, it should --
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10:45:34 1 unsurprisingly, \$17 million of insurance costs a
 10:45:39 2 lot more than 4 million.
 10:45:41 3 So by reducing the death benefit -- if you
 10:45:45 4 bought 4 million, for example, which would target
 10:45:47 5 the end -- if we had bought this policy at
 10:45:51 6 4 million and kept it at 4 million, it would have
 10:45:53 7 had a much higher value at distribution purposes,
 10:45:57 8 which would cost John more tax.
 10:45:59 9 So the design of the policy was around
 10:46:02 10 meeting John's desire to reduce tax as much as
 10:46:07 11 possible.
 10:46:07 12 **BY MR. MOORE:**
 10:46:07 13 **Q.** But my understanding is that the -- so
 10:46:09 14 there was an intention to reduce the --
 10:46:12 15 ultimately reduce what the value of the policy was?
 10:46:15 16 **A. Correct.**
 10:46:16 17 **Q.** There were very high face values
 10:46:19 18 initially, but the intention is to lower that at a
 10:46:22 19 certain point?
 10:46:22 20 **A. Correct.**
 10:46:22 21 **Q.** Okay. And did, in fact -- at some
 10:46:28 22 point, were these policies purchased?
 10:46:30 23 **A. Yes.**
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10:46:30 1 **Q.** And were you the -- the purchasing or
 10:46:33 2 selling agent for those policies?
 10:46:35 3 **A. I was.**
 10:46:35 4 **Q.** Okay. I'm showing you what's been
 10:46:54 5 marked as Exhibit 4.
 10:47:30 6 **A. Okay. I've reviewed it.**
 10:47:31 7 **Q.** And do you recall this letter?
 10:47:33 8 **A. Yes, I do.**
 10:47:33 9 **Q.** Okay. And is that letter sent from you
 10:47:36 10 to Dr. and Mrs. Repicci?
 10:47:38 11 **A. Yes.**
 10:47:38 12 **Q.** Okay. It says: Number one, how long
 10:47:44 13 do these policies last? The policies are designed
 10:47:47 14 to last to age 100.
 10:47:57 15 So in each case, the policies were designed
 10:47:59 16 to last to age 100; is that correct?
 10:48:01 17 **A. Yes, they were both created under**
 10:48:04 18 **current assumptions. They were projected to last**
 10:48:06 19 **to age 100, yes.**
 10:48:07 20 **Q.** And was that the intent of the
 10:48:10 21 policies?
 10:48:10 22 **A. The intent was to provide death benefit**
 10:48:13 23 **as long as possible, yes.**
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10:48:14 1 **Q.** But was it Dr. Repicci's expressed
 10:48:17 2 desire to maintain coverage to at least age 100?
 10:48:20 3 **A. Yes.**
 10:48:21 4 **Q.** Okay. I'm going to give you exhibits
 10:48:44 5 marked 5, 6, and 7. See if you could please review
 10:48:52 6 those.
 10:49:04 7 **A. Okay.**
 10:49:44 8 **Q.** Okay. And referring really just to
 10:49:48 9 Exhibits 5 and 6, are you familiar with these
 10:49:50 10 exhibits?
 10:49:51 11 **A. 5 looks to be the existing policy, the**
 10:49:53 12 **MassMutual policy itself that John purchased; 6**
 10:49:57 13 **looks to be an in-force ledger that was run last**
 10:50:02 14 **year.**
 10:50:02 15 **Q.** Okay. Now, can you tell me, the
 10:50:09 16 MassMutual policy, as I understand, it's called a
 10:50:14 17 guaranteed policy; is that correct?
 10:50:14 18 **A. The policy is called -- let's see what**
 10:50:19 19 **it's actually called. I'm not sure what it's**
 10:50:20 20 **called.**
 10:50:35 21 **I'm not sure what it's called, but the**
 10:50:37 22 **policy is -- this particular product is a**
 10:50:40 23 **guaranteed death benefit product, that part's --**
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10:50:43 **1 that's correct.**
 10:50:43 **2 Q.** Okay. And what does that mean, it's a
 10:50:48 **3 guaranteed death benefit?**
 10:50:49 **4 A. What this means is that the insurance**
 10:50:53 **5 company has given a secondary guarantee, meaning**
 10:50:56 **6 they don't guarantee the cash, but they guarantee**
 10:50:58 **7 that the policy, provided no premiums were taken**
 10:51:00 **8 out of it, no withdrawals are made, the death**
 10:51:03 **9 benefit will be there as long as the insurance**
 10:51:05 **10 company is still in business.**
 10:51:06 **11 Q.** Okay. Now, are there -- are there
 10:51:13 **12 policies that are not guaranteed available?**
 10:51:15 **13 A. Yes.**
 10:51:15 **14 Q.** Okay. Why -- why would you want a
 10:51:21 **15 guaranteed policy versus a non-guaranteed policy?**
 10:51:23 **16 A. There are a variety of reasons why**
 10:51:27 **17 somebody might want a guaranteed versus a**
 10:51:31 **18 non-guaranteed.**
 10:51:32 **19 Policies have current assumption, which are**
 10:51:35 **20 based on today's crediting rates and today's**
 10:51:38 **21 expenses, and then you have policies that are based**
 10:51:40 **22 on a guaranteed assumption, which is the minimum --**
 10:51:43 **23 minimum crediting rate they can allow under the**
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10:51:46 **1 law, the law that -- how the policy has been**
 10:51:51 **2 approved by the insurance department with the**
 10:51:54 **3 maximum charges they can -- they can levy.**
 10:51:55 **4 So insurance policies have a range of**
 10:51:58 **5 crediting, there's usually not a cap but there's a**
 10:52:00 **6 floor, and expenses, there's a range of what they**
 10:52:04 **7 can -- the insurance department has allowed them to**
 10:52:05 **8 charge.**
 10:52:06 **9 So if you buy the guaranteed product, it's**
 10:52:09 **10 usually more expensive, buying a guaranteed product**
 10:52:13 **11 than it is non-guaranteed product, because the**
 10:52:15 **12 insurance company is giving you a secondary**
 10:52:21 **13 guarantee, they make a promise to guarantee that**
 10:52:24 **14 regardless of the investment, regardless of the**
 10:52:27 **15 change in expenses or the change in interest rates,**
 10:52:31 **16 they will still pay you the death benefit. It's a**
 10:52:34 **17 more expensive product so it's not commonly**
 10:52:39 **18 purchased.**
 10:52:40 **19 Q.** Roughly how much more expensive, if you
 10:52:43 **20 can estimate, is a guaranteed product compared to a**
 10:52:47 **21 non-guaranteed product?**
 10:52:48 **22 A. Hard to say. It depends on the**
 10:52:51 **23 interest rate and it depends on how much the**
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10:52:54 **1 company is crediting relative to its -- how much**
 10:52:57 **2 more above its minimum.**
 10:52:59 **3 So a company's crediting 6 percent interest**
 10:53:02 **4 and the minimum guarantee on the production is 3,**
 10:53:06 **5 that's going to be a heck of a lot more expensive.**
 10:53:11 **6 If it's 4 versus 3, it won't be quite as much.**
 10:53:14 **7 Today, guaranteed products are super**
 10:53:16 **8 expensive because interest rates are super low, so**
 10:53:20 **9 almost nobody is buying guaranteed products today.**
 10:53:22 **10 Q.** In 2002, do you have any recollection
 10:53:26 **11 of the approximate increased cost of a guaranteed**
 10:53:31 **12 policy?**
 10:53:31 **13 A. I don't know what the increased cost**
 10:53:34 **14 was. I know that when we ran that number for John**
 10:53:38 **15 at Lincoln, because we did, that the problem was**
 10:53:39 **16 the guaranteed product would have so much less**
 10:53:43 **17 death benefit that there wouldn't be a compression**
 10:53:47 **18 for tax purposes.**
 10:53:48 **19 So we showed him a guaranteed product, but**
 10:53:51 **20 the problem was we couldn't get 60 percent**
 10:53:54 **21 compression for tax purposes.**
 10:53:54 **22 We could have sold that product, but he**
 10:53:58 **23 opted for the product that had more tax**
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10:54:00 **1 compression, not the product that had the**
 10:54:02 **2 guarantees.**
 10:54:02 **3 Q.** The -- wouldn't you have had the same
 10:54:10 **4 issue on the MassMutual policy in terms of the**
 10:54:14 **5 compression?**
 10:54:14 **6 A. In Mass, we had -- we had different**
 10:54:17 **7 underwriting and the products were designed**
 10:54:20 **8 differently.**
 10:54:21 **9 So Mass was an unusual situation where their**
 10:54:25 **10 guaranteed product had enormous compression for tax**
 10:54:29 **11 purposes, which was a surprise.**
 10:54:31 **12 Q.** From a risk standpoint for a client, is
 10:54:35 **13 a guaranteed product less risky or more risky than**
 10:54:39 **14 a non-guaranteed product?**
 10:54:41 **15 A. Depends on the circumstances.**
 10:54:44 **16 Q.** Could you elaborate?
 10:54:46 **17 A. Sure. Guaranteed products often have**
 10:54:50 **18 much less cash or accumulation in them. So in a**
 10:54:54 **19 return for the secondary guarantee that the**
 10:54:55 **20 insurance company gives you, you -- there are**
 10:54:57 **21 usually higher costs inside the product.**
 10:54:59 **22 So if you spend \$1 million in premium, you**
 10:55:04 **23 might find that the overhead expense wipes out**
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10:55:07 **1 significantly more of that cash in a guaranteed**
 10:55:10 **2 product than in a non-guaranteed product.**
 10:55:12 **3 So what that means for a client is you get**
 10:55:15 **4 the guaranteed death benefit, but if you change**
 10:55:17 **5 your mind and you want to go to another company, if**
 10:55:21 **6 you wanted to take the cash out, there will be a**
 10:55:23 **7 significant penalty applied.**
 10:55:24 **8 So the tradeoff is, yes, you can get the**
 10:55:26 **9 death benefit, but you will not have the long-term**
 10:55:30 **10 cash accumulation because the expenses are higher.**
 10:55:35 **11 Q. If your long-term intent is to have**
 10:55:38 **12 insurance coverage in place to asset you. Is there**
 10:55:44 **13 less risk in a guaranteed policy than a**
 10:55:47 **14 non-guaranteed policy?**
 10:55:48 **15 A. Can you rephrase that?**
 10:55:49 **16 Q. If the -- if the ultimate goal of the**
 10:55:52 **17 insurance policy is to provide for the existence of**
 10:55:58 **18 insurance at the age of death to a certain point, a**
 10:56:01 **19 certain year, is the guaranteed product less risky**
 10:56:05 **20 than a non-guaranteed product?**
 10:56:07 **21 A. All things being equal and not trying**
 10:56:15 **22 to buy the policy inside a retirement plan, I would**
 10:56:19 **23 say yes.**

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10:56:19 **1 Q. Okay. And is that the reason you**
 10:56:23 **2 purchased the MassMutual policy as a guaranteed**
 10:56:26 **3 policy?**
 10:56:26 **4 A. Was what the reason?**
 10:56:30 **5 Q. Less risk for the client.**
 10:56:32 **6 A. We purchased the Mass policy because**
 10:56:35 **7 the compression was great, so we had great**
 10:56:38 **8 compression and we had underwriting, which was a**
 10:56:40 **9 real big struggle.**
 10:56:41 **10 John and Lori had both had cancer, so we got**
 10:56:46 **11 them approved, we found a policy that had great**
 10:56:49 **12 compression and it had the guarantee, which was**
 10:56:51 **13 obviously great.**
 10:56:51 **14 Q. So the guarantee was, in fact, an**
 10:56:54 **15 enhancement for the client?**
 10:56:56 **16 A. Yes.**
 10:56:56 **17 Q. So all things being equal, that's a**
 10:57:00 **18 benefit to the client?**
 10:57:02 **19 A. All things being equal, having a**
 10:57:05 **20 guaranteed versus non-guaranteed would be -- would**
 10:57:07 **21 make it better, sure.**
 10:57:08 **22 Q. Do you recall what your commission was**
 10:57:21 **23 for the MassMutual policy?**

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10:57:24 **1 A. I do not.**
 10:57:25 **2 Q. Do you recall whether it was more than**
 10:57:39 **3 \$400,000?**
 10:57:41 **4 A. I don't believe that to be the case.**
 10:57:43 **5 Q. Do you recollect it might be more than**
 10:57:48 **6 \$300,000?**
 10:57:49 **7 A. For the Mass policy?**
 10:57:50 **8 Q. Yes, for the MassMutual policy.**
 10:57:52 **9 A. I don't think so.**
 10:57:52 **10 Q. What about over 200,000?**
 10:57:55 **11 A. I couldn't be sure, but it's possibly**
 10:57:57 **12 in that range.**
 10:58:23 **13 Q. Let me show you what's been marked as**
 10:58:27 **14 Exhibit 8. If you could review that, please.**
 10:58:46 **15 A. Sure. Sorry. Okay.**
 10:59:17 **16 Q. My question is, is this the policy that**
 10:59:19 **17 was put in place under the conjunction of the**
 10:59:23 **18 MassMutual policy?**
 10:59:23 **19 A. This was the Lincoln policy that was**
 10:59:25 **20 purchased at the same time, yes.**
 10:59:26 **21 Q. Okay. And --**
 10:59:30 **22 A. I'm sorry. There's something -- yes,**
 10:59:50 **23 this is the Lincoln policy.**

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10:59:51 **1 Q. And was that policy a guaranteed**
 11:00:04 **2 policy?**
 11:00:05 **3 A. This policy had been guaranteed for a**
 11:00:08 **4 certain number of years, and this isn't the -- I**
 11:00:15 **5 don't have the illustration with this so it's hard**
 11:00:18 **6 to say. There is a guaranteed period, and I don't**
 11:00:23 **7 remember where the guaranteed period ran out.**
 11:00:25 **8 Q. Is it possible that that guaranteed**
 11:00:27 **9 period would have been for the first three years of**
 11:00:30 **10 the policy?**
 11:00:30 **11 A. Only three years, no.**
 11:00:32 **12 Q. Why --**
 11:00:39 **13 A. But I think I -- go ahead.**
 11:00:42 **14 Q. Why do you say it would not have been**
 11:01:03 **15 more than three years?**
 11:01:04 **16 A. Why the policy would be guaranteed for**
 11:01:07 **17 more than three years?**
 11:01:08 **18 Q. Yes.**
 11:01:09 **19 A. I recall one of the letters that we**
 11:01:18 **20 went over with John and Hy talking about 15 or**
 11:01:23 **21 16 years of guarantees, not three. So I cannot**
 11:01:26 **22 imagine a policy with three years. I've never seen**
 11:01:29 **23 a policy with three-year guarantees.**

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11:01:31 **1 Q.** Okay. Do you have any recollection of
 11:01:34 **2** what your commission was with regard to this
 11:01:37 **3** policy?
 11:01:37 **4 A. I do not.**
 11:01:37 **5 Q.** Could it have been more than \$500,000?
 11:01:42 **6 A. Highly doubt that.**
 11:01:44 **7 Q.** Could it have been more than \$400,000?
 11:01:48 **8 A. I don't think that's the case, either.**
 11:01:49 **9 Q.** Could it have been more than \$300,000?
 11:01:52 **10 A. Maybe.**
 11:01:53 **11 Q.** Is it fair to say that the commissions
 11:01:57 **12** on these policies were fairly high?
 11:01:59 **13 A. Yes.**
 11:01:59 **14 Q.** Okay. Showing you what's been marked
 11:02:13 **15** as Exhibit 9, and if you could review that and tell
 11:02:22 **16** me if you recognize the document.
 11:02:26 **17 A. Yes.**
 11:02:32 **18 Q.** And could you briefly describe what it
 11:02:35 **19** is?
 11:02:35 **20 A. This is a letter to John and Lori,**
 11:02:39 **21 their policies have been approved, and this looks**
 11:02:41 **22 to be a letter that suggests that they pay half the**
 11:02:49 **23 premium -- half the annual premium now to get these**
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11:02:52 **1 policies enforced, and it's wiring instructions to**
 11:02:54 **2 MassMutual.**
 11:02:55 **3 Q.** Okay. So were you basically -- strike
 11:03:03 **4** that.
 11:03:03 **5** Did you expect the clients to be able to get
 11:03:06 **6** these policies enforced themselves, or did you
 11:03:10 **7** expect your company to help them do that?
 11:03:14 **8 MR. TRACY:** Object to the form.
 11:03:15 **9 THE WITNESS:** I'm not sure what you mean by
 11:03:16 **10** the questions.
 11:03:16 **11 BY MR. MOORE:**
 11:03:16 **12 Q.** Describe your role in implementing the
 11:03:22 **13** policies.
 11:03:22 **14 A. So I sold them the policies. From the**
 11:03:26 **15 previous chart on one of the exhibits, they had**
 11:03:30 **16 money in IRAs, IRAs are not allowed to buy life**
 11:03:35 **17 insurance, we had explained to John that he**
 11:03:38 **18 couldn't buy the insurance in an IRA, you have to**
 11:03:42 **19 buy from a profit sharing plan.**
 11:03:46 **20 So we had to talk to Hy Polakoff, tax**
 11:03:47 **21 attorney, another two attorneys, to figure out --**
 11:03:53 **22 to move money from his IRA to a profit sharing plan**
 11:03:57 **23 under his practice and facilitate the purchase of**
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11:04:00 **1 insurance that way.**
 11:04:00 **2 So there were tax and legal advisors**
 11:04:03 **3 involved putting the piece together, which they**
 11:04:04 **4 handled. I handled the placing of the insurance.**
 11:04:06 **5 So I handled the application, the**
 11:04:09 **6 signatures, managed the underwriting process, and**
 11:04:13 **7 it was -- they were going to pay the premium and**
 11:04:16 **8 then the insurance would be enforced.**
 11:04:17 **9 So I'm not sure if that answers your**
 11:04:20 **10 question, but I was definitely responsible for**
 11:04:23 **11 placing the insurance.**
 11:04:23 **12 Q.** And is it fair to say that you -- the
 11:04:25 **13** clients need a lot of direction in this sort of
 11:04:30 **14** situation, in implementing this type of a plan?
 11:04:36 **15 MR. TRACY:** Object to the form.
 11:04:37 **16 THE WITNESS:** When there's a lot of pieces,
 11:04:41 **17** sure. John's a really smart guy, he seems to
 11:04:47 **18** follow things very well, one of the smartest
 11:04:50 **19** clients I can recall having. He also had a team of
 11:04:53 **20** people.
 11:04:54 **21** So we spent time with Hy, we spent time
 11:04:56 **22** with -- there were a lot of people making
 11:04:58 **23** decisions. So did I ever make decisions for John?
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11:05:02 **1** No, that never happened. Did it require a lot of
 11:05:07 **2** people to look at this? John was smart enough to
 11:05:11 **3** know he wanted to save taxes and he had a great
 11:05:16 **4** accountant in Hy Polakoff. We went spent a lot of
 11:05:17 **5** time talking through the pieces.
 11:05:17 **6** So we were saving John a couple million
 11:05:20 **7** bucks in taxes and it's definitely not easy and it
 11:05:21 **8** did involve a lot of people.
 11:05:23 **9 BY MR. MOORE:**
 11:05:24 **10 Q.** So it's fair to say then that the
 11:05:26 **11** client would -- needed direction to implement this
 11:05:31 **12** plan?
 11:05:31 **13 MR. TRACY:** Object to the form.
 11:05:32 **14 THE WITNESS:** I'd say the client needed
 11:05:36 **15** information. The client needed information. This
 11:05:39 **16** was the -- this letter, as well as all the other
 11:05:43 **17** ones, were things that came on the heels of
 11:05:46 **18** multiple conversations that we had.
 11:05:48 **19** So pre the letter, there's probably five or
 11:05:53 **20** ten phone calls -- well, a few phone calls, and
 11:05:56 **21** this was the, hey, send me information so I can
 11:05:59 **22** give it to somebody.
 11:06:00 **23** So I'm sure John's not directing the wire.
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1 That might have been Lori, that might have been Hy,
 2 that might have been Julie.
 11:06:10 3 I'm sure John is not going to the bank and
 11:06:12 4 getting in line to send a wire. So he would ask
 11:06:15 5 me, send me the information on what to do so I can
 11:06:20 6 have somebody do it.
 11:06:23 7 **BY MR. MOORE:**
 11:06:27 8 **Q.** So the client is expecting some
 11:06:29 9 direction from someone in order to get this plan
 11:06:34 10 implemented?
 11:06:35 11 **A.** He's definitely looking for help on the
 11:06:38 12 logistics, where to send the money, where to wire
 11:06:42 13 the money, what to do, yes.
 11:06:43 14 **Q.** Let me show you what's been marked as
 11:06:49 15 Exhibit 10.
 11:07:00 16 **A.** Okay.
 11:07:00 17 **Q.** And could you just briefly describe
 11:07:03 18 what this document is?
 11:07:04 19 **A.** Similar to the previous one except this
 11:07:07 20 is the wiring instructions for the Lincoln policy.
 11:07:09 21 **Q.** And did those instructions come from
 11:07:12 22 you?
 11:07:12 23 **A.** Yes.
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11:07:12 1 **Q.** Okay. And let me show you what's been
 11:07:16 2 marked as Number 11. Have you reviewed this
 11:08:12 3 document?
 11:08:12 4 **A.** Yes.
 11:08:13 5 **Q.** Can you just briefly describe what it
 11:08:15 6 is?
 11:08:15 7 **A.** Yes, so this is telling the plan for
 11:08:19 8 the premiums and how we plan to finalize the
 11:08:22 9 policy.
 11:08:24 10 **Number three is a letter from Lincoln. John**
 11:08:29 11 **has asked -- John has expressed interest in a**
 11:08:34 12 **guaranteed product. We've talked to John about the**
 11:08:37 13 **fact that the guaranteed product will not give him**
 11:08:40 14 **the tax savings he wants upon a withdrawal or**
 11:08:43 15 **purchase of the policy from a retirement fund.**
 11:08:46 16 **Lincoln -- he has asked for a letter from**
 11:08:49 17 **Lincoln stating that he will be able to make the**
 11:08:54 18 **exchange without -- without any surrender charges**
 11:08:59 19 **in the future, so we've shown John a guaranteed --**
 11:09:04 20 **we've shown John buying the policy that's not**
 11:09:07 21 **guaranteed to get the compression and then using**
 11:09:08 22 **that policy's cash to transfer the value through an**
 11:09:14 23 **internal exchange at Lincoln through a policy that**
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11:09:18 1 **is guaranteed, and he wants that in writing from**
 11:09:21 2 **Lincoln.**
 11:09:22 3 **And it looks like he's already received the**
 11:09:27 4 **conversation from them, but he wants it in writing**
 11:09:31 5 **and the plan is for them to give him the letter**
 11:09:35 6 **that I think was subsequently sent on the 23rd.**
 11:09:37 7 **Q.** Okay. And this letter was from you --
 11:09:38 8 **A.** It is.
 11:09:39 9 **Q.** -- to Dr. Repicci?
 11:09:40 10 **A.** Correct.
 11:09:40 11 **Q.** And looking at number seven of that
 11:09:43 12 letter, second sentence, it says: Face values are
 11:09:47 13 converted in month 25 or later.
 11:09:49 14 Does that refer to what I was generally
 11:09:52 15 describing earlier as the intent of the plan to
 11:09:55 16 reduce at some point the large face values --
 11:09:59 17 **A.** Yes.
 11:09:59 18 **Q.** -- of the policies?
 11:10:00 19 **A.** Yes, it is.
 11:10:01 20 **Q.** All right. Let me show you what's been
 11:10:11 21 marked as Exhibit 12, and if you could just tell me
 11:10:43 22 if you're familiar with this document.
 11:10:44 23 **A.** Yes.
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11:10:45 1 **Q.** And can you describe this document for
 11:10:47 2 me, please?
 11:10:47 3 **A.** This looks to be a flow chart of John's
 11:10:51 4 **plan dated October 24th, 2003, that gives him a**
 11:10:58 5 **visual of what we plan to do to help facilitate**
 11:11:04 6 **moving these insurance policies out of his**
 11:11:07 7 **retirement plan into an irrevocable trust for the**
 11:11:13 8 **benefit of his kids.**
 11:11:14 9 **Q.** And do you know who prepared this
 11:11:17 10 document?
 11:11:17 11 **A.** I believe I did this.
 11:11:21 12 **Q.** And, again, let me just show you
 11:11:34 13 Exhibit 13. Are you familiar with this document?
 11:11:46 14 **A.** Give me one second to read it.
 11:11:49 15 **Q.** Sure. Sorry.
 11:11:50 16 **A.** That's okay.
 11:11:55 17 **Okay. Yes.**
 11:11:56 18 **Q.** And are you able to tell me what this
 11:11:59 19 document regards?
 11:12:01 20 **A.** It looks to be more -- more
 11:12:12 21 **step-by-step instructions on what we wanted to --**
 11:12:14 22 **what we had just talked about on a call, and this**
 11:12:19 23 **facilitates the steps of the previous chart.**
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11:12:22 **1 Q.** Okay. And is this correspondence from
 11:12:25 **2** you?
 11:12:25 **3 A. Yes.**
 11:12:25 **4 Q.** Showing you what's been marked as
 11:12:40 **5** Exhibit 14, if you could review that, please, and
 11:12:42 **6** tell me if you're familiar with it.
 11:12:52 **7 A. Yes.**
 11:13:10 **8 Q.** Can you briefly describe this document
 11:13:14 **9** for me, please?
 11:13:15 **10 A. In 2006, John and I had a conversation**
 11:13:19 **11 about estate planning, and John wanted to give some**
 11:13:28 **12 money to the kids.**
 11:13:32 **13 At the time, their estate was -- was a**
 11:13:35 **14 taxable estate of 24 million, or some significant**
 11:13:40 **15 number, and he wanted to facilitate giving -- he**
 11:13:45 **16 asked us about ways to -- I believe the**
 11:13:48 **17 conversation went along the lines of what we did in**
 11:13:52 **18 the pension was great, that worked out really well,**
 11:13:55 **19 what can we do now? What else can we do for estate**
 11:13:59 **20 planning?**
 11:13:59 **21 So these are some -- this is an introduction**
 11:14:02 **22 to an idea that -- for estate planning to help him**
 11:14:05 **23 facilitate his other goals of removing money from**
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11:14:09 **1 his estate tax efficiently.**
 11:14:12 **2 Q.** Did you have periodic discussions with
 11:14:14 **3** Dr. Repicci regarding potential plans of -- let's
 11:14:21 **4** say potential plans for wealth management?
 11:14:24 **5 A. John would call from time to time and**
 11:14:26 **6 we'd have conversations.**
 11:14:26 **7 Q.** Okay. And do you know if this was ever
 11:14:28 **8** implemented in any way?
 11:14:29 **9 A. No, I don't believe it was.**
 11:14:30 **10 Q.** Okay. Showing you Number 15, and I'm
 11:14:42 **11** basically going to have the same questions for you
 11:14:44 **12** with regard to Number 15.
 11:14:52 **13 A. Yes.**
 11:14:52 **14 Q.** Are you familiar with the document?
 11:14:56 **15 A. I am.**
 11:14:57 **16 Q.** Okay. And is this a letter from you to
 11:15:01 **17** Dr. Repicci?
 11:15:02 **18 A. It is.**
 11:15:02 **19 Q.** Is it fair to say it's discussing
 11:15:08 **20** wealth protection plans?
 11:15:11 **21 A. This is introducing him to another**
 11:15:14 **22 concept, relatively complicated plan, yes.**
 11:15:19 **23 Q.** Okay. Is this a plan that you
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11:15:26 **1** presented Dr. Repicci with?
 11:15:26 **2 A. Yes, this is something we talked**
 11:15:29 **3 about -- this is something we talked about on the**
 11:15:31 **4 phone and then I sent him some other information,**
 11:15:33 **5 yes.**
 11:15:33 **6 Q.** Do you know if this plan was ever
 11:15:37 **7** implemented at all?
 11:15:38 **8 A. It was.**
 11:15:38 **9 Q.** Okay. And can you tell me how that was
 11:15:41 **10** implemented?
 11:15:41 **11 A. So we had this conversation, John**
 11:15:44 **12 expressed some concern or some interest in this**
 11:15:47 **13 plan, and then the next step of this plan was for**
 11:15:52 **14 John to speak to David Mandell, Celia Clark, and Hy**
 11:16:00 **15 Polakoff, because it was relatively complicated,**
 11:16:03 **16 and so I gave John off to David and Celia to talk**
 11:16:09 **17 about this plan.**
 11:16:10 **18 Q.** I don't mean to jump ahead too far, but
 11:16:19 **19** is this plan related in any way to the second
 11:16:24 **20** Lincoln Life policy that was purchased?
 11:16:25 **21 A. It is.**
 11:16:25 **22 Q.** Okay. All right. Then let's go right
 11:16:28 **23** to showing you 16, and I'd just like to see if you
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11:16:40 **1** were familiar with this document, and my question
 11:16:42 **2** is whether this is relative to the second Lincoln
 11:16:46 **3** Life policy that was purchased.
 11:16:47 **4 A. Marcus did something different. So**
 11:16:53 **5 Marcus is his son-in-law, so this doesn't have to**
 11:17:02 **6 do with the policy, this has to do with the medical**
 11:17:05 **7 practices engaging of CBIZ, C-B-I-Z, for a program**
 11:17:15 **8 with their practice, but it's not directly related**
 11:17:19 **9 to the policy.**
 11:17:19 **10 Q.** Okay. Let me show you what's been
 11:17:35 **11** marked as Exhibit 17.
 11:18:04 **12 A. Okay.**
 11:18:04 **13 Q.** Okay. This is a Lincoln Life Annuity
 11:18:11 **14** Company of New York Policy, Policy No. 7317144.
 11:18:15 **15** For purposes of this deposition, I'll refer to this
 11:18:17 **16** as the 144 Lincoln policy.
 11:18:19 **17 A. Sure.**
 11:18:20 **18 Q.** Are you familiar with this policy?
 11:18:24 **19 A. I'm aware of this, yes.**
 11:18:27 **20 Q.** Okay. And is this -- when I -- in my
 11:18:30 **21** previous questions, I had asked about a second
 11:18:33 **22** Lincoln Life policy; is this the second Lincoln
 11:18:35 **23** Life policy?
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11:18:36 **1 A. It is.**
 11:18:36 **2 Q.** And for the record, the initial Lincoln
 11:18:40 **3** Life policy, which I believe was Exhibit 8 --
 11:18:49 **4 A. I'm sorry.**
 11:18:49 **5 Q.** Exhibit 8, I'll refer to that as the
 11:18:56 **6** 026 policy just for clarification purposes, but
 11:19:00 **7** with regard to this 144 policy, were you the
 11:19:03 **8** writing agent for this policy?
 11:19:04 **9 A. I was not.**
 11:19:05 **10 Q.** And can you tell me who the writing
 11:19:07 **11** agent was?
 11:19:07 **12 A. David Mandell.**
 11:19:09 **13 Q.** Okay. Very briefly, I'll give you,
 11:19:27 **14** actually -- later in the deposition, I will give
 11:19:29 **15** you the full opportunity to give more detail on
 11:19:33 **16** this policy. For the moment, I'm just interested
 11:19:37 **17** in basic information on the policy.
 11:19:41 **18** You had said David Mandell is the writing
 11:19:43 **19** agent. What was your role with regard to this
 11:19:47 **20** insurance in brief form?
 11:19:49 **21 A. I don't know that I had a role at this**
 11:19:56 **22 time.**
 11:19:56 **23 Q.** Did you receive any kind of commission
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11:19:59 **1** with regard to this policy?
 11:20:00 **2 A. I did not.**
 11:20:00 **3 Q.** Nothing of any kind?
 11:20:02 **4 A. Nothing.**
 11:20:02 **5 Q.** Okay. And Exhibit 15 relates to this
 11:20:21 **6** 144 Lincoln policy, correct?
 11:20:23 **7 A. 15 was the e-mail where I introduced**
 11:20:27 **8 the idea to John?**
 11:20:29 **9 Q.** Yes.
 11:20:29 **10 A. Yes.**
 11:20:29 **11 Q.** So that came from you, and yet you had
 11:20:34 **12** no involvement whatsoever in the -- in either the
 11:20:38 **13** selling or the implementation of policy 144?
 11:20:41 **14 A. Other than that letter, no.**
 11:20:43 **15 Q.** Nothing of any kind?
 11:20:44 **16 A. No.**
 11:20:45 **17 Q.** Okay. Showing you what's been marked
 11:21:08 **18** as Exhibit 18, and I'll ask you if you're familiar
 11:21:12 **19** with that document.
 11:21:14 **20 A. I haven't seen this before, but ...**
 11:21:26 **21 Q.** Okay. That's fine. I'm going to show
 11:21:33 **22** you what's been marked as Exhibit 19.
 11:21:44 **23 A. Okay.**
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11:21:45 **1 Q.** And can you tell me are you familiar
 11:21:47 **2** with this letter?
 11:21:48 **3 A. Yes.**
 11:21:48 **4 Q.** And is this a letter from you to
 11:21:55 **5** Dr. Repicci and his wife?
 11:21:56 **6 A. It is.**
 11:21:56 **7 Q.** Okay. And can you tell me what this
 11:21:58 **8** involves?
 11:21:58 **9 A. Sure. So, at this time in 2007, John**
 11:22:08 **10 has purchased the policy that was the previous**
 11:22:14 **11 exhibit.**
 11:22:14 **12 Q.** 144?
 11:22:16 **13 A. The 144 policy, correct. Yes, John has**
 11:22:19 **14 purchased 144, the company that he worked with --**
 11:22:25 **15 the company that administered this plan appears to**
 11:22:29 **16 be going out of business.**
 11:22:31 **17 So John has a policy that he's**
 11:22:40 **18 illustrated -- he's illustrated paying premiums and**
 11:22:43 **19 working with this -- this company in the Virgin**
 11:22:43 **20 Islands.**
 11:22:49 **21 They appear to be going out of business,**
 11:22:51 **22 John's left with a policy that he's not going to be**
 11:22:55 **23 able to pay the estimated premium and he's asking**
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11:22:58 **1 me to figure out, how do I manage this policy and**
 11:23:02 **2 keep it enforced?**
 11:23:05 **3 So they're running -- the company they**
 11:23:10 **4 worked with ran into some tax trouble and some**
 11:23:14 **5 business trouble, and he's has asked me to look**
 11:23:14 **6 into what are the options with this insurance**
 11:23:14 **7 policy.**
 11:23:19 **8 Q.** Okay. Let's leave it at that for now,
 11:23:22 **9** but we can come back to that.
 11:23:25 **10 A. Okay.**
 11:23:33 **11 Q.** So I'm showing you what's been marked
 11:23:44 **12** as Exhibit 20, and I'll ask you if you're familiar
 11:23:47 **13** with this document.
 11:23:49 **14 A. Yes.**
 11:23:58 **15 Q.** And did you have -- can you tell me
 11:24:05 **16** what the letter is to and from?
 11:24:07 **17 A. It's from John Repicci to me.**
 11:24:09 **18 Q.** Okay. Can you briefly describe what
 11:24:17 **19** the letter covers?
 11:24:17 **20 A. The letter says: As you're well aware,**
 11:24:22 **21 I'm having great difficulties with the IRS over**
 11:24:26 **22 insurance policies, and I'm actually not sure what**
 11:24:29 **23 that's about.**
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11:24:30 **1 Q.** Strike that. Chris, I'll let the
 11:24:33 **2** letter speak for itself since it didn't come from
 11:24:36 **3** you. That's fine. Just saving time.
 11:24:41 **4 A. Sure.**
 11:24:41 **5 Q.** Did you have any discussion with
 11:24:45 **6** Dr. Repicci after seeing this letter?
 11:24:47 **7 A. Yes.**
 11:24:53 **8 Q.** And how frequently would you say you
 11:24:55 **9** spoke with him after this?
 11:24:56 **10 A. I don't remember the timing of -- there**
 11:24:59 **11 was a window of time where we were spending a lot**
 11:25:01 **12 of time looking at his policies, looking at his**
 11:25:05 **13 Lincoln policies. I'm not 100 percent sure what**
 11:25:08 **14 that -- what that window was, but there was a lot**
 11:25:11 **15 of interaction back and forth with Lincoln and with**
 11:25:14 **16 John over a period of a couple of years.**
 11:25:16 **17 Q.** Okay. Let me show you what's been
 11:25:19 **18** marked as Exhibit 21. Again, I'll ask you if
 11:25:32 **19** you're familiar with the document.
 11:25:33 **20 A. Yes.**
 11:25:33 **21 Q.** Okay. And is this a document from you
 11:25:37 **22** to Hy Polakoff?
 11:25:41 **23 A. Yes, it is.**

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11:25:42 **1 Q.** Okay. Do you recall sending this
 11:25:45 **2** document?
 11:25:45 **3 A. I do.**
 11:25:46 **4 Q.** The last sentence -- the last
 11:25:52 **5** paragraph, the first sentence says: I'm doing all
 11:25:53 **6** I can to fix the situation.
 11:25:55 **7** Can you tell me what needed fixing?
 11:25:58 **8 A. Well, John's unhappy with how Lincoln**
 11:26:03 **9 is handling the conversion, and quite frankly, so**
 11:26:09 **10 am I.**
 11:26:11 **11 Q.** When you say handling the conversion,
 11:26:14 **12** can you tell me what you mean by that?
 11:26:16 **13 A. Yes, the -- the challenge of making the**
 11:26:20 **14 conversion -- John received a letter that I can't**
 11:26:25 **15 seem to find, but I know it exists, on**
 11:26:28 **16 February 23rd or so, 2003, that states that they**
 11:26:35 **17 will exchange the policies for no surrender**
 11:26:38 **18 charges, and John insists on having that letter and**
 11:26:42 **19 the previous exhibits demonstrate that was**
 11:26:46 **20 important and it's coming, and then there's a fax,**
 11:26:50 **21 and I can't seem to find the fax.**
 11:26:52 **22 When we went back to Lincoln to do exchanges**
 11:26:55 **23 and I had numerous people and their advanced team**

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11:26:58 **1 working on hundreds of illustrations, the problem**
 11:27:00 **2 was they would exchange policies for a guaranteed**
 11:27:06 **3 policy, but Lincoln had an internal rule that if**
 11:27:13 **4 they go to exchange from policy A to policy B, they**
 11:27:17 **5 can't have the surrender charge be less.**
 11:27:22 **6 So what a surrender charge is is if there's**
 11:27:26 **7 \$1 million in cash in a policy, and there's a**
 11:27:29 **8 \$200,000 surrender charge, the million dollars will**
 11:27:32 **9 continue to operate from inside the policy, or you**
 11:27:36 **10 can walk away with \$800,000. That's the difference**
 11:27:39 **11 between the account value and the surrender value;**
 11:27:40 **12 it's the penalty for leaving.**
 11:27:41 **13 The problem was the guaranteed products**
 11:27:44 **14 Lincoln had had small surrender charges in the --**
 11:27:49 **15 relative to cash value, which is the same problem**
 11:27:52 **16 we'd run into when we bought the policies in the**
 11:27:55 **17 beginning. So they said the problem was they**
 11:28:00 **18 couldn't move to a guaranteed product and waive the**
 11:28:04 **19 surrender charge.**
 11:28:06 **20 So every illustration we saw was wiping out**
 11:28:12 **21 John's cash and -- the problem was they were**
 11:28:19 **22 applying -- Lincoln was applying charges that were**
 11:28:23 **23 not consistent with the letter from October 23rd,**

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11:28:27 **1 2003, and the fact that I couldn't find the letter**
 11:28:32 **2 made it very hard for me to get the people at**
 11:28:35 **3 Lincoln to -- to make good on that particular -- on**
 11:28:41 **4 that transfer.**
 11:28:42 **5 So it was getting very difficult, and with**
 11:28:47 **6 those surrender fees, the problem we had was**
 11:28:51 **7 guaranteed products are so expensive here in 2015**
 11:28:55 **8 because interest rates have become so low.**
 11:28:57 **9 So fixing the situation was, the product**
 11:29:01 **10 John wants is much more expensive, and Lincoln is**
 11:29:05 **11 not, in my opinion, is not honoring the deal that**
 11:29:13 **12 we will allow you to move without surrender**
 11:29:14 **13 charges.**
 11:29:14 **14 If they would have moved cash accounts to**
 11:29:15 **15 cash accounts into a guaranteed product, we'd have**
 11:29:17 **16 a great product, and they just didn't do it.**
 11:29:19 **17 And we had numerous people in their advanced**
 11:29:23 **18 planning do hundreds and hundreds of illustrations,**
 11:29:26 **19 tried different products, tried all kinds of stuff.**
 11:29:28 **20 I probably have hundreds of -- I shouldn't say**
 11:29:31 **21 hundreds, but dozens and dozens of conversations**
 11:29:34 **22 and e-mails with people at Lincoln trying to get**
 11:29:37 **23 John what he wants.**

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11:29:39 **1 Q.** And talking right now about just the
 11:29:45 **2** 026 policy --
 11:29:46 **3 A. The first policy.**
 11:29:47 **4 Q.** -- strike that.
 11:29:48 **5** Is your response relative to both policies,
 11:29:51 **6** or were you speaking to just one of the Lincoln
 11:29:55 **7** policies in the previous answer?
 11:29:58 **8 A. The answer about them not doing what**
 11:30:03 **9 they said they would do applies to the 026 policy.**
 11:30:08 **10 Q.** Okay. And with regard to the 026
 11:30:12 **11** policy, is it fair to say that Dr. Repicci's
 11:30:15 **12** concern is that he has a policy that unless -- in
 11:30:21 **13** 2014 at least -- unless he contributes significant
 11:30:25 **14** additional funds, that that policy will lapse?
 11:30:27 **15 A. He is concerned that -- he is concerned**
 11:30:30 **16 that the policy here required a future premium,**
 11:30:33 **17 yes. That's -- the concern is he may have to pay**
 11:30:37 **18 future premiums depending on how long he lives,**
 11:30:39 **19 yes.**
 11:30:40 **20 Q.** Right. And I believe you said that the
 11:30:42 **21** original intent of the policies was to have
 11:30:46 **22** policies in place to age 100?
 11:30:48 **23 A. The intent was twofold: Get the money**
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11:30:52 **1 out of the retirement plan at a significant tax**
 11:30:56 **2 saving, and to have a policy in place at his time**
 11:30:59 **3 of passing, whenever that would be.**
4 Q. Okay.
 11:31:00 **5 A. He had two goals, for sure.**
 11:31:01 **6 Q.** But the policy in place at the time of
 11:31:04 **7** passing up to the age of 100; is that correct?
 11:31:08 **8 A. 100 -- John never expressed to me that**
 11:31:12 **9 he thought he would live to 100, it just happened**
 11:31:16 **10 that the insurance policy guarantee at Mass went to**
 11:31:19 **11 100 under guarantees, and the Lincoln product at**
 11:31:21 **12 the time under current assumptions went to 100, and**
 11:31:26 **13 at the time, both companies said if you make it to**
 11:31:28 **14 100, we will no longer charge fees, so if you live**
 11:31:33 **15 to be 125, you still have coverage.**
 11:31:36 **16 So that -- that came up based on the**
 11:31:38 **17 illustrations of the products, not around John**
 11:31:41 **18 giving guidance that he needed insurance to age**
 11:31:42 **19 100.**
 11:31:42 **20 Q.** Is it fair to say that Dr. Repicci
 11:31:44 **21** expected the policies to have value -- face value
 11:31:51 **22** to be reduced at a certain point, to have that
 11:31:54 **23** value in place until age 100?
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11:31:57 **1 MR. TRACY:** Object to the form.
 11:31:58 **2 THE WITNESS:** Can you repeat the question?
 11:32:01 **3 BY MR. MOORE:**
 11:32:01 **4 Q.** By value, I'm talking about the
 11:32:04 **5** insurance value. Is it fair to say that
 11:32:06 **6** Dr. Repicci expected the 026 policy to have an
 11:32:14 **7** insurance value to age 100 without additional
 11:32:18 **8** payments at the time he purchased the policies?
 11:32:22 **9 A. Did he expect to have -- what did John**
 11:32:30 **10 think? I can't possibly know. Was the plan to --**
 11:32:37 **11 was the plan to have insurance enforced till death?**
 11:32:41 **12 Yes, that was obviously the plan.**
 11:32:44 **13 Q.** And so in 2014, is it fair to say he's
 11:32:48 **14** upset because his policy will not last anywhere
 11:32:52 **15** close to 100 years?
 11:32:55 **16 MR. TRACY:** Object to the form.
 11:32:56 **17 THE WITNESS:** In 20 -- I don't know what
 11:33:00 **18** John was thinking, but in our conversations, John
 11:33:03 **19** made it clear in 2014 that he wants to make -- that
 11:33:08 **20** he would like -- he would like to convert to a
 11:33:11 **21** guaranteed product, which we understand, we tried
 11:33:17 **22** to do.
 11:33:17 **23** The problem was twofold: One, the products
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11:33:21 **1** became extremely expensive with low interest rates,
 11:33:24 **2** and two, Lincoln wasn't giving us the cash -- they
 11:33:28 **3** were not waiving the surrender charges to make that
 11:33:30 **4** happen.
 11:33:30 **5** So a combination of things happening made
 11:33:34 **6** this very difficult to give John what he wants, and
 11:33:38 **7** it was sad, it was disappointing.
 11:33:40 **8 Q.** Did Dr. Repicci express to you his
 11:33:43 **9** concern that he had understood if he would have
 11:33:47 **10** insurance under the 026 policy without further
 11:33:52 **11** premiums being paid subsequent to the initial
 11:33:55 **12** premiums that would allow the policy to be enforced
 11:34:00 **13** to age 100?
 11:34:02 **14 A. I don't recall a conversation where he**
 11:34:06 **15 expressed that, no.**
 11:34:06 **16 Q.** And he never expressed being
 11:34:12 **17** disappointed or upset that the policy might lapse
 11:34:17 **18** before age 100?
 11:34:18 **19 A. Those are two different questions. So,**
 11:34:20 **20 yes, he was disappointed, but we had had**
 11:34:24 **21 conversations about a non-guaranteed product for**
 11:34:27 **22 years previous that given that interest rates are**
 11:34:29 **23 low, given that you may not have paid all the**
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11:34:32 **1 premiums that we originally anticipated.**
 11:34:34 **2 In 2014, this wasn't a complete surprise to**
 11:34:38 **3 John, we had numerous conversations about the fact**
 11:34:41 **4 that there might be more cash needed to make this**
 11:34:44 **5 policy work.**
 11:34:44 **6 Q.** Did you ever put that in writing to
 11:34:47 **7 Dr. Repicci?**
 11:34:48 **8 A. I did.**
 11:34:48 **9 Q.** Can you -- would you be able to provide
 11:34:53 **10 me with copies of that correspondence?**
 11:34:55 **11 MR. TRACY:** We have.
 11:34:57 **12 BY MR. MOORE:**
 11:34:59 **13 Q.** Can you recall anything specifically
 11:35:01 **14 where that's discussed?**
 11:35:03 **15 A. I had sent -- there's -- there's**
 11:35:06 **16 definitely a letter in the evidence saying, these**
 11:35:10 **17 are your options having talked to Lincoln, these**
 11:35:13 **18 are your options of how you can pay \$200,000 a**
 11:35:18 **19 year, you can pay a lump sum, you can pay a number**
 11:35:21 **20 of different ways to give yourself the guarantees**
 11:35:21 **21 in these products, and I actually did that for both**
 11:35:25 **22 the 026 and the 144 policies and gave him options,**
 11:35:28 **23 I think, all the way back to maybe 2007 or**
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11:35:29 **1 somewhere well before 2014.**
 11:35:30 **2 So we had -- I had advised him long before**
 11:35:34 **3 2014 that the policies and the interest rate**
 11:35:38 **4 environment that would require additional cash --**
 11:35:41 **5 additional premiums, which to the best of my**
 11:35:43 **6 knowledge, he did not pay.**
 11:35:57 **7 MR. MOORE:** For the record, we would like,
 11:35:59 **8 to the extent it's an outstanding document, to see**
 11:36:03 **9 the correspondence with Dr. Repicci in any manner**
 11:36:08 **10 regarding that issue.**
 11:36:10 **11 BY MR. MOORE:**
 11:36:34 **12 Q.** I'll show you what's been marked as
 11:36:36 **13 Exhibit 22. Please let me know if you're familiar**
 11:36:47 **14 with this document.**
 11:37:12 **15 A. Okay. Yes, I've read it.**
 11:37:16 **16 Q.** Okay. And this -- is this a document
 11:37:19 **17 from you to Hy Polakoff?**
 11:37:21 **18 A. Yes, it is.**
 11:37:22 **19 Q.** Okay. Dated July 9th, 2015. At the
 11:37:28 **20 end of the second paragraph, there's a sentence**
 11:37:31 **21 that states: We never sold a guaranteed death**
 11:37:35 **22 benefit product of Lincoln because it wasn't**
 11:37:38 **23 available in New York with the particular benefits**
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11:37:45 **1** he was looking for at the time.
 11:37:48 **2** What -- and what were the particular
 11:37:51 **3** benefits he was looking for?
 11:37:52 **4 A. New York has different -- products in**
 11:37:56 **5 New York are different from almost every other**
 11:37:59 **6 state that they have different -- they have**
 11:38:05 **7 different requirements and it's the combination**
 11:38:12 **8 of -- two things would be the guaranteed death**
 11:38:14 **9 benefit and the low cash value, and those were two**
 11:38:18 **10 things that were not available -- we couldn't**
 11:38:20 **11 combine those two things in a product for John at**
 11:38:24 **12 that time. It wasn't available.**
 11:38:25 **13 Q.** And was it available in any other
 11:38:30 **14 insurance company?**
 11:38:30 **15 A. Sure, but it's a MassMutual policy.**
 11:38:35 **16 Q.** And why didn't you simply purchase
 11:38:39 **17 additional coverage under the MassMutual policy so**
 11:38:40 **18 that could be guaranteed?**
 11:38:41 **19 A. MassMutual, because of the**
 11:38:45 **20 underwriting, they actually rated wary. They would**
 11:38:48 **21 not go higher than 17.5. They gave us the maximum**
 11:38:50 **22 amount of insurance they could give us. That's as**
 11:38:52 **23 high as they would go.**
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11:38:53 **1 Q.** Okay.
 11:38:55 **2 A. I was a career agent at MassMutual at**
 11:39:00 **3 the time, so I had every intent to try and place as**
 11:39:04 **4 much business as possible, and that's as much as I**
 11:39:08 **5 could get.**
 11:39:08 **6 Q.** And were there other producers --
 11:39:16 **7 insurance companies in New York at the time that**
 11:39:20 **8 were offering guaranteed policies?**
 11:39:21 **9 A. Other companies, I'm sure. Guaranteed**
 11:39:23 **10 product -- guaranteed product with low cash value,**
 11:39:28 **11 I have no idea.**
 11:39:29 **12 Q.** Did you make inquiry with any other
 11:39:32 **13 companies?**
 11:39:32 **14 A. Absolutely. So I worked through two**
 11:39:35 **15 companies -- three companies. I went through**
 11:39:39 **16 Visys, Millennium --**
 11:39:40 **17 Q.** Can you spell --
 11:39:40 **18 A. V-I-S-Y-S. I went through Visys, I went**
 11:39:46 **19 through Millennium Brokerage Group, and I went**
 11:39:48 **20 through a third company, I can't remember, out of**
 11:39:51 **21 Sherman Oaks, California, who were brokerage**
 11:39:55 **22 companies and asked them for products that would**
 11:39:57 **23 serve this purpose, and these were the ones that**
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11:40:00 **1** were recommended.

11:40:09 **2** **Q.** And you said these were the ones that

11:40:11 **3** were recommended?

11:40:11 **4** **A.** Lincoln and MassMutual were the two

11:40:15 **5** companies that had products that matched.

11:40:17 **6** **Q.** Meaning guaranteed?

11:40:18 **7** **A.** Meaning low cash value, low value for

11:40:27 **8** tax purposes early on. The taxation was the

11:40:34 **9** driving factor in the decision; it certainly

11:40:38 **10** appeared that way.

11:40:40 **11** **Q.** Okay. Let me show you what's been

11:41:05 **12** marked as Exhibit 23, and then I'll ask you to

11:41:12 **13** review it, please, and ask if you can identify it.

11:41:49 **14** **A.** Okay.

11:41:50 **15** **Q.** Are you familiar with this --

11:41:55 **16** **A.** I am.

11:41:55 **17** **Q.** -- correspondence?

11:41:56 **18** And can you describe the correspondence,

11:41:58 **19** please?

11:41:58 **20** **A.** It's a letter from me to his

11:42:01 **21** accountant, Hy Polakoff, October 2002 before John

11:42:09 **22** purchases the insurance, and I'm explaining --

11:42:15 **23** **Q.** And by the insurance, do you mean the

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11:42:18 **1** Lincoln 026 policy?

11:42:20 **2** **A.** Yes, this is regarding the Lincoln 026

11:42:23 **3** policy. There's also some commentary about the

11:42:26 **4** MassMutual policy, as well.

11:42:27 **5** **Q.** Okay. Is it fair to say that some

11:42:35 **6** concerns were raised with regard to the Lincoln

11:42:38 **7** policy that showed potential lapse of the policy

11:42:42 **8** before age 100?

11:42:42 **9** **A.** There was concern about the guaranteed

11:42:45 **10** page or columns of the illustration in the Lincoln

11:42:49 **11** policy that showed that under a guaranteed

11:42:52 **12** scenario, the policy would lapse in 15 years and

11:42:55 **13** John wanted some explanation on what that was and

11:42:58 **14** what it would take for that to happen.

11:43:00 **15** **Q.** And wasn't the concern that there be a

11:43:05 **16** policy in place enforced at age 100?

11:43:08 **17** **A.** At this time, the conversation is about

11:43:10 **18** the guaranteed. We're talking specifically about

11:43:12 **19** the guaranteed policy and what it would take for

11:43:15 **20** this thing to blow up in 15 years.

11:43:21 **21** **Q.** When you -- just -- do you mean for the

11:43:30 **22** policy to lapse in 15 years, or are you talking

11:43:33 **23** about lapsing after 15 years?

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11:43:35 **1** **A.** This memo looks to be in response to

11:43:40 **2** John's concerns about the guaranteed -- the two

11:43:44 **3** numbers given in the illustration are the current

11:43:46 **4** assumptions and the guaranteed.

11:43:48 **5** Current showed to age 100, assuming

11:43:51 **6** maintaining current interest crediting and current

11:43:55 **7** mortality, and then separately there was a column

11:43:59 **8** or separate columns that were under the guaranteed

11:44:00 **9** scenario, which showed this policy lapsing in

11:44:03 **10** around 15, 16 years, and that was -- I remember a

11:44:06 **11** great deal of conversation about the guarantees and

11:44:09 **12** this letter looks to be my commentary to Hy to

11:44:13 **13** explain to him what I had just spoken to John about

11:44:16 **14** with regard to the guarantees.

11:44:17 **15** **Q.** And the intent still is for the policy

11:44:23 **16** to not lapse before age 100, correct?

11:44:26 **17** **MR. TRACY:** Objection.

11:44:27 **18** **THE WITNESS:** I don't know what John's

11:44:30 **19** intent was. My plan was to purchase a policy that

11:44:38 **20** would meet the needs for tax -- for tax efficiency

11:44:46 **21** in the short-term, and then later potentially shift

11:44:49 **22** the policy to a guaranteed policy if one were

11:44:55 **23** available and it made sense.

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11:44:56 **1** **BY MR. MOORE:**

11:45:05 **2** **Q.** And didn't you say that the intent of

11:45:08 **3** the policies was for it to last until age 100?

11:45:13 **4** **MR. TRACY:** Objection.

11:45:13 **5** **THE WITNESS:** I don't know if that's what I

11:45:16 **6** said, but I believe what I said was the goal was to

11:45:20 **7** have insurance when they died, whenever that might

11:45:23 **8** be.

11:45:23 **9** **BY MR. MOORE:**

11:45:24 **10** **Q.** Up to age 100, correct?

11:45:25 **11** **A.** I don't have a -- remember that being

11:45:30 **12** John's explicit intent, it was just the numbers in

11:45:33 **13** illustrations.

11:45:34 **14** **Q.** So is it simply random that age 100 was

11:45:42 **15** picked out?

11:45:42 **16** **A.** It's not random, but that's when the

11:45:47 **17** insurance company stops paying -- stops charging

11:45:50 **18** mortality costs.

11:45:51 **19** So if you can make it to 100 and you happen

11:45:55 **20** to live to 110, the policy would illustrate to

11:45:57 **21** continue to cover. So the goal was to have a

11:46:02 **22** policy that would pay out the death benefits.

11:46:05 **23** **Q.** Would continue to pay out death

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11:46:09 **1** benefits to what age?

11:46:11 **2 A. In a perfect world, until he dies --**

11:46:15 **3 until he and Lori died.**

11:46:15 **4 Q.** Can you look again at Exhibit 4,

11:46:18 **5** please? Can you take a look at the first

11:46:57 **6** paragraph?

7 (A recess was then taken at 11:50 a.m.)

11:51:01 **8 THE WITNESS:** Yes.

11:51:01 **9 BY MR. MOORE:**

11:51:01 **10 Q.** Okay. And didn't you previously

11:51:05 **11** testify that these policies are designed to last to

11:51:09 **12** age 100?

11:51:09 **13 A. Yeah, I did -- I did testify that**

11:51:13 **14 that -- the case and the policies -- the policies**

11:51:16 **15 were illustrated to last to age 100, yes.**

11:51:21 **16 Q.** And would you expect a client to

11:51:24 **17** understand the policies were designed to last to

11:51:26 **18** age 100?

11:51:27 **19 A. Under current assumptions, yes, but the**

11:51:31 **20 Mass policy, that's guaranteed; for the Lincoln,**

11:51:34 **21 that would require a certain set of circumstances**

11:51:36 **22 to continue.**

11:51:37 **23 Q.** Okay. Looking now -- continuing with

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11:51:43 **1** Exhibit 23.

11:52:03 **2 MR. TRACY:** Okay. 23. There we go.

11:52:06 **3 BY MR. MOORE:**

11:52:07 **4 Q.** And on the second page of that document

11:52:11 **5** under the section of legal disclosures, is it fair

11:52:16 **6** to say that you're making a more precise

11:52:20 **7** distinction between a guaranteed portion of the

11:52:22 **8** illustration versus the general -- the -- strike

11:52:30 **9** that. Let me rephrase that.

11:52:31 **10** You are -- is it fair to say that you're

11:52:34 **11** responding to concerns about an illustration

11:52:38 **12** showing that the policy would lapse within

11:52:42 **13** 15 years?

11:52:42 **14 A. I'm addressing the concern of the**

11:52:45 **15 guarantee, yes.**

11:52:46 **16 Q.** Okay. So -- and the last paragraph on

11:52:50 **17** that page states that it would be impossible for 15

11:52:55 **18** years of minimum crediting and a maximum mortality

11:52:59 **19** charges to sneak up on us. We see what happens

11:53:02 **20** every year. John, Lorraine, and I will know each

11:53:06 **21** and every year what their policy is being credited.

11:53:10 **22** If we see two or three bad years in a row, then we

11:53:14 **23** will address the problem immediately so no major

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11:53:17 **1** problem arises for them or their children.

11:53:20 **2 A. I see that.**

11:53:21 **3 Q.** Okay. And then the next paragraph is

11:53:24 **4** options, and could you read that paragraph for us,

11:53:27 **5** please?

11:53:27 **6 A. If we notice bad returns for a few**

11:53:33 **7 years, we would look at a number of options:**

11:53:37 **8 Option 1, change insurance companies; Option 2,**

11:53:39 **9 reduce the face amount of insurance to reduce**

11:53:44 **10 mortality expenses, however unlikely, even if the**

11:53:49 **11 policy had to be reduced significantly to, for**

11:53:52 **12 example, \$7 million, the strategy would still be a**

11:53:57 **13 windfall for John's family because the proceeds**

11:54:00 **14 would pay out through the insurance trust income**

11:54:02 **15 and estate tax-free rather than be hit with both**

11:54:06 **16 sets of onerous taxes; Option 3, calculate how much**

11:54:10 **17 additional premium would have to be paid to**

11:54:14 **18 continue with 10-plus million of death benefit to**

11:54:17 **19 offset the bad year we had, or 4, see how many**

11:54:21 **20 years we are losing from two or three bad years.**

11:54:26 **21 It is impossible that two or three bad years -- it**

11:54:29 **22 is possible that two or three bad years only reduce**

11:54:34 **23 the coverage to end at age 95. We can recalculate**

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11:54:37 **1 how we're doing every year. In fact, every annual**

11:54:41 **2 statement shows you where you are relative to your**

11:54:45 **3 initial purchase and projects what you might expect**

11:54:47 **4 given the conditions at that time.**

11:54:48 **5 Q.** Then in the following paragraph that's

11:54:51 **6** titled conclusions, you state: I am comfortable

11:54:56 **7** that the illustrations based on current assumptions

11:54:59 **8** that show John and Lorraine's policies lasting

11:55:03 **9** beyond age 100 are a very accurate depiction of

11:55:06 **10** what is likely to happen in this policy.

11:55:09 **11** Now, given that statement, is it -- do I

11:55:13 **12** understand that the options that you're discussing

11:55:19 **13** in this letter mean that if the -- something should

11:55:26 **14** happen to the policy that might potentially make it

11:55:31 **15** lapse before age 100, if you could undertake the

11:55:34 **16** steps to correct the situation; is that right?

11:55:37 **17 A. Yes.**

11:55:37 **18 Q.** Okay. So, in other words, these things

11:55:43 **19** can be done in order to make sure that the policy

11:55:45 **20** is going to last to age 100?

11:55:47 **21 A. Correct.**

11:55:47 **22 Q.** And so is it fair to say that age 100

11:55:50 **23** is important to the policy holder?

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11:55:55 **1** **MR. TRACY:** Objection.
 11:55:57 **2** **MR. MOORE:** Strike that question.
 11:56:00 **3** **BY MR. MOORE:**
 11:56:03 **4** **Q.** Okay. Now, did you see what happened
 11:56:13 **5** every year with regard to the 026 policy?
 11:56:17 **6** **A.** We did receive statements, yes.
 11:56:22 **7** **Q.** And can you tell me the first year that
 11:56:25 **8** you noticed anything sneaking up that might be a
 11:56:29 **9** problem with the policies?
 11:56:30 **10** **A.** We had a conversation in 2000 -- we had
 11:56:41 **11** conversations in 2006 about the Lincoln policy and
 11:56:48 **12** John seemed very comfortable with where we were in
 11:56:51 **13** 2006 because he went and bought a second policy
 11:56:55 **14** that looked very similar.
 11:56:59 **15** So it would seem -- I can't imagine John
 11:57:05 **16** would buy a similar policy from David when he's
 11:57:09 **17** unhappy with where he was with his -- with the 144
 11:57:12 **18** policy.
 11:57:13 **19** I'd say it was a couple of years after that,
 11:57:23 **20** 2007-2008, I can't remember when the letter was
 11:57:30 **21** when we realized that we may have to pay more
 11:57:33 **22** premium, which was the solution in Option 3 from
 11:57:42 **23** Exhibit 23.

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11:57:45 **1** **Q.** Mr. Jarvis, let me show you what's been
 11:58:46 **2** marked as Exhibit 41, and these are two annual
 11:58:53 **3** statements from Lincoln with regard to the 026
 11:58:57 **4** policy, the 2005 statement, a page from 2009, as
 11:59:06 **5** well. Are you familiar with these documents?
 11:59:09 **6** **A.** I don't recall them, but I know this is
 11:59:12 **7** the annual statement.
 11:59:12 **8** **Q.** Did you receive these annually?
 11:59:14 **9** **A.** Yes.
 11:59:14 **10** **Q.** Okay. And I note on the first page
 11:59:19 **11** you're listed as a financial representative --
 11:59:21 **12** **A.** Yes.
 11:59:22 **13** **Q.** -- of this policy?
 11:59:27 **14** Page 2 of these statements -- of this
 11:59:31 **15** statement, I'm looking at Bates number 381, in the
 11:59:39 **16** first half of the page, it states: If planned
 11:59:44 **17** premiums are paid using guaranteed rates based on
 11:59:47 **18** your premium pattern, your policy will lapse as of
 11:59:53 **19** April 2016.
 11:59:53 **20** Then it goes on, the next section is: If no
 11:59:56 **21** additional premiums are paid using the guaranteed
 12:00:00 **22** rate, again, the policy will lapse as of
 12:00:04 **23** April 2016.

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12:00:06 **1** Did you have any conversations with
 12:00:08 **2** Dr. Repicci reflecting that fact?
 12:00:13 **3** **A.** No, I don't believe we had any further
 12:00:16 **4** conversations. This is consistent with the
 12:00:18 **5** original -- with the original illustration
 12:00:22 **6** language, and I'm still not concerned about the
 12:00:25 **7** guaranteed being an issue.
 12:00:25 **8** **Q.** Are you concerned about the policy
 12:00:29 **9** lapsing at all?
 12:00:30 **10** **A.** At this point, we're crediting well
 12:00:39 **11** above the minimum and the expenses have not gone up
 12:00:44 **12** so we're not on track -- we're well above the
 12:00:51 **13** minimums. So I wouldn't say there was a great deal
 12:00:56 **14** of concern by either one of us.
 12:00:57 **15** **Q.** What was the first year that you
 12:00:59 **16** noticed any problem with the policy lasting to age
 12:01:04 **17** 100?
 12:01:04 **18** **A.** I don't remember.
 12:01:05 **19** **Q.** Did you ever determine that there was a
 12:01:10 **20** potential problem with the policy lasting until age
 12:01:14 **21** 100?
 12:01:14 **22** **A.** Sure.
 12:01:15 **23** **Q.** When?

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12:01:15 **1** **A.** I don't recall.
 12:01:16 **2** **Q.** Any sense of within a couple of years,
 12:01:22 **3** within -- was it more than five years after the
 12:01:25 **4** policy was purchased?
 12:01:26 **5** **A.** Probably more than five.
 12:01:32 **6** **Q.** And what was the nature of the concern?
 12:01:36 **7** **A.** Well, the nature of the concern was the
 12:01:43 **8** interest rates had dropped and the policy's current
 12:01:46 **9** assumption illustrations aren't looking like what
 12:01:49 **10** we had originally hoped they would be.
 12:01:51 **11** So at that point, we've gone from 5.25
 12:01:57 **12** annual crediting down to 4, and it looks like we
 12:02:01 **13** might need some more cash.
 12:02:03 **14** **Q.** And did you send anything to
 12:02:08 **15** Dr. Repicci reflecting that concern?
 12:02:10 **16** **A.** Yes.
 12:02:10 **17** **Q.** And what did you send?
 12:02:12 **18** **A.** We had conversations and I -- we had
 12:02:15 **19** new illustrations, and I sent John premium
 12:02:18 **20** schedules to cover what he'd have to pay to cover
 12:02:23 **21** these policies.
 12:02:24 **22** **MR. MOORE:** And for the record, could you
 12:02:26 **23** produce a copy of those, please, all that

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12:02:29 **1** documentation, please?

12:02:31 **2** **MR. TRACY:** Just put that writing. We'll

12:02:33 **3** take that under advisement.

12:02:38 **4** **BY MR. MOORE:**

12:02:39 **5** **Q.** Can you state for me again what it was

12:02:44 **6** you provided Dr. Repicci?

12:02:44 **7** **A.** In-force illustrations -- well, a

12:02:46 **8** letter -- I forwarded him a letter from Lincoln

12:02:52 **9** where a Lincoln representative had come up with

12:02:55 **10** different options for John to pay premiums to cover

12:02:59 **11** the death benefit, to extend that death benefit for

12:03:04 **12** a longer period of time, and those were forwarded

12:03:07 **13** to John.

12:03:07 **14** **Q.** And do you know approximately, vaguely,

12:03:10 **15** what year that might have been? Was it -- let me

12:03:14 **16** ask you this, was it after 2010?

12:03:18 **17** **A.** I think it was before.

12:03:19 **18** **Q.** Okay.

12:03:28 **19** **A.** It may not have been. Honestly, I'd

12:03:30 **20** have to go back and look.

12:03:32 **21** **Q.** And how would you typically communicate

12:03:34 **22** with Dr. Repicci?

12:03:35 **23** **A.** Phone calls typically. John liked to

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12:03:39 **1** talk.

12:03:40 **2** **Q.** Did you follow-up with a letter or

12:03:43 **3** e-mails sometimes?

12:03:43 **4** **A.** John wasn't big in e-mail, but

12:03:48 **5** sometimes we'd fax. His fax number was his home

12:03:48 **6** phone number so sometimes it rang and sometimes it

12:03:51 **7** wouldn't.

12:03:52 **8** So sometimes it was fax, sometimes it was

12:03:54 **9** letter, sometimes it was -- or something like that.

12:03:59 **10** I definitely forwarded an e-mail and potentially

12:04:05 **11** sent an e-mail to Hy so Hy has it.

12:04:07 **12** **Q.** Do you have the same recollection of

12:04:10 **13** having sent him in-force illustrations and other

12:04:14 **14** materials that relate to your concern about the

12:04:16 **15** policy lapsing before age 100?

12:04:19 **16** **MR. TRACY:** Object to the form.

12:04:20 **17** **THE WITNESS:** We had conversations about the

12:04:22 **18** policies not -- not projecting to last to age 100

12:04:27 **19** because of the lower interest rates and had

12:04:32 **20** numerous conversations with Lincoln, and I

12:04:36 **21** forwarded to John premium options on how much it

12:04:39 **22** was cost with recommendations on how to protect the

12:04:43 **23** long-term death benefit of the 026 and the 144

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12:04:47 **1** policies.

12:04:48 **2** **BY MR. MOORE:**

12:04:49 **3** **Q.** Did you look into changing insurance

12:04:52 **4** companies?

12:04:52 **5** **A.** Yes.

12:04:52 **6** **Q.** When did that occur?

12:04:57 **7** **A.** Changing insurance company

12:05:06 **8** conversation, '11-'12, and subsequent years after

12:05:11 **9** that, and the surrender charges were too big of a

12:05:15 **10** problem.

12:05:17 **11** **Q.** And what about reduction in face

12:05:21 **12** amounts of insurance?

12:05:24 **13** **A.** I'm sure we looked at that, too, and I

12:05:32 **14** cannot remember what the answer was to that one,

12:05:35 **15** whether it was possible or might -- I vaguely

12:05:43 **16** recall the challenge of that is it would have

12:05:47 **17** caused possible surrender charges, which would have

12:05:50 **18** been eating up more cash and wasn't a desire.

12:05:53 **19** **Q.** Okay. And looking at option number

12:05:55 **20** three, calculating how much additional premium

12:05:58 **21** would have to be paid to continue with 10 million

12:06:01 **22** plus a death benefit to offset the bad years, was

12:06:04 **23** that done?

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12:06:04 **1** **A.** Yes.

12:06:05 **2** **Q.** When was that done?

12:06:07 **3** **A.** I don't remember.

12:06:07 **4** **Q.** Do you recall whether it was prior to

12:06:11 **5** 2010?

12:06:12 **6** **A.** I don't remember.

12:06:13 **7** **Q.** Do you have any recollection of doing

12:06:17 **8** that within a few years of purchase of the 026

12:06:22 **9** policy?

12:06:23 **10** **A.** Definitely not within a few years of

12:06:27 **11** the 026 policy.

12:06:27 **12** **Q.** Do you think it would have been within

12:06:29 **13** five years after the purchase of the policy?

12:06:31 **14** **A.** Yes.

12:06:31 **15** **Q.** And do you think it might have been in

12:06:34 **16** 2014?

12:06:34 **17** **A.** I don't remember.

12:06:37 **18** **Q.** Okay. Would you have sent any

12:06:40 **19** documentation relaying that to Dr. Repicci?

12:06:44 **20** **A.** Yes.

12:06:45 **21** **MR. MOORE:** And for the record, I'd like to

12:06:47 **22** request any such documentation.

12:06:50 **23** **MR. TRACY:** Send it in writing and we'll

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12:06:53 **1** take it under advisement.

12:06:56 **2** **BY MR. MOORE:**

12:07:02 **3** **Q.** Number 4, see how many years we are

12:07:04 **4** losing from two or three bad years. It is possible

12:07:06 **5** that two or three bad years will reduce the

12:07:08 **6** coverage to end at age 95. We can recalculate how

12:07:12 **7** you're doing every year.

12:07:14 **8** Was that done every year?

12:07:15 **9** **A. Not that I can recall.**

12:07:19 **10** **Q.** Did you have any kind of formal review

12:07:28 **11** of the policies at the end of every year?

12:07:31 **12** **A. We did not.**

12:07:32 **13** **Q.** Is it fair to say that this letter

12:07:37 **14** leaves a clear impression now if there were any

12:07:41 **15** issues that arose with the non-guaranteed Lincoln

12:07:52 **16** policy that they could be corrected?

12:07:54 **17** **MR. TRACY:** Objection.

12:07:57 **18** **THE WITNESS:** The letter clearly states that

12:08:00 **19** there are options and I'm happy to help them pursue

12:08:04 **20** and look at any one of those or any combination of

12:08:22 **21** those four options.

12:08:25 **22** There's no claim that every problem can be

12:08:29 **23** fixed, there's an explanation that there are

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12:08:32 **1** options we can pursue.

12:08:35 **2** **MR. MOORE:** Can we go off the record here?

12:08:37 **3** **MR. TRACY:** Sure.

12:18:19 **4** (A recess was then taken at 12:08 p.m.)

12:29:37 **5** **BY MR. MOORE:**

12:30:06 **6** **Q.** Before we get to Exhibit 24, let me ask

12:30:12 **7** you again, looking at -- Mr. Jarvis, looking at

12:30:40 **8** Exhibit 23 again, and I think you testified that

12:30:48 **9** you did receive annual statements with regard to

12:30:52 **10** the policies?

12:30:52 **11** **A. Yes, I did.**

12:30:53 **12** **Q.** And I did ask if you have any

12:30:56 **13** recollection of when the first time is you felt

12:31:00 **14** that there were any problems with the policy, and I

12:31:04 **15** believe you indicated you don't recall. Can you

12:31:08 **16** tell me if you believe that there were any problems

12:31:12 **17** with the policies before five years out?

12:31:16 **18** **A. I don't remember.**

12:31:16 **19** **Q.** Okay. Okay. So you don't have any

12:31:24 **20** recollection of when you may have seen anything

12:31:28 **21** with regard to the policies not performing?

12:31:29 **22** **A. I don't recall, no. I don't recall**

12:31:31 **23** **when that first happened.**

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12:31:32 **1** **Q.** Okay. Are you familiar with this

12:31:56 **2** document, Exhibit 24?

12:31:58 **3** **A. Give me one sec.**

12:32:00 **4** **Q.** Sure.

12:32:10 **5** **A. Yes.**

12:32:11 **6** **Q.** Okay. And it appears this is a letter

12:32:18 **7** that follows your letter of October 9th, 2002, to

12:32:23 **8** Hy Polakoff?

12:32:24 **9** **A. This is to John and Lori on**

12:32:30 **10** **October 9th, so I don't know which one was first,**

12:32:33 **11** **but ...**

12:32:33 **12** **Q.** Okay. All right. From you, correct?

12:32:34 **13** **A. Yes.**

12:32:35 **14** **Q.** All right. And the -- in the first

12:32:39 **15** paragraph, you talked about guaranteed versus

12:32:43 **16** projected insurance illustration.

12:32:44 **17** And number five there, it says you assume

12:32:47 **18** similar rationale for the Lincoln policy, as well,

12:32:50 **19** correct?

12:32:50 **20** **A. That's what it says in number five,**

12:32:54 **21** **yes.**

12:32:54 **22** **Q.** Did that rationale hold up through the

12:32:57 **23** entire length of the policy, the Lincoln policy?

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12:32:59 **1** **A. Let me read this to see what -- that**

12:33:04 **2** **rationale paragraph.**

12:33:06 **3** **The fact that number one, the guaranteed**

12:33:09 **4** **illustration pages assume higher mortality and a**

12:33:13 **5** **minimum crediting, generally speaking, that's the**

12:33:16 **6** **same for both policies.**

12:33:22 **7** **Mass has not raised its mortality charges --**

12:33:37 **8** **to assume 3 percent every single year would be**

12:33:40 **9** **prudent. Obviously Lincoln had a higher minimum,**

12:33:44 **10** **so that would make sense.**

12:34:01 **11** **Yeah, the fact that crediting rates dropped,**

12:34:05 **12** **he may not get as far as he wants, but he'd get**

12:34:09 **13** **pretty far, I think that's generally the case.**

12:34:13 **14** **I mean, similar rationale, but it has**

12:34:16 **15** **different crediting rates, different illustrations,**

12:34:18 **16** **but the idea that changes may come, sure.**

12:34:24 **17** **Q.** And then you make the statement in

12:34:28 **18** number 4: I don't think this option is very

12:34:31 **19** likely, but it should be very comforting that a

12:34:34 **20** likely worst case scenario still gets you and

12:34:37 **21** Lorraine coverage into your 90s; is that correct?

12:34:39 **22** **A. I wrote that.**

12:34:40 **23** **Q.** At any point did you feel that

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12:34:42 **1** conclusion change?

12:34:44 **2** **A. Yeah, at some point the current**

12:34:48 **3 assumption showed they were getting into their late**

12:34:52 **4 80s to around 90, that did change.**

12:34:55 **5 Q.** And you don't have any recollection of

12:34:58 **6** when?

12:34:59 **7 A. I couldn't tell you when the**

12:35:02 **8 conversation took place, but after some period of**

12:35:18 **9 time of extremely low interest rates, it did become**

12:35:23 **10 obvious that the projections were not going to be**

12:35:27 **11 met. I just don't know when exactly that happened.**

12:35:29 **12 Q.** And did you make any recommendations --

12:35:31 **13** written recommendations to Dr. Repicci when things

12:35:34 **14** began to change?

12:35:35 **15 A. We had many conversations about paying**

12:35:39 **16 more premium in, and I'm sure I sent him some**

12:35:43 **17 numbers. Again, the date, you asked me earlier, I**

12:35:48 **18 can't remember when 100 percent.**

12:35:49 **19 Q.** Let me show you what's been marked as

12:35:58 **20** Exhibit 25, and I'm going to ask you to review and

12:36:01 **21** identify if you're able to.

12:36:17 **22 A. Okay.**

12:36:36 **23 Q.** Are you familiar with this document?

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12:36:40 **1 A. I am.**

12:36:41 **2 Q.** And can you tell us did you write this

12:36:46 **3** letter?

12:36:46 **4 A. I did.**

12:36:47 **5 Q.** And who was it to?

12:36:48 **6 A. It was to John.**

12:36:49 **7 Q.** Can you describe generally what the

12:36:51 **8** letter entails?

12:36:52 **9 A. So we're discussing John's interest in**

12:36:57 **10 a guaranteed product with the understanding that**

12:37:00 **11 the current -- that he's not going to be able to**

12:37:05 **12 buy that product now and get the tax benefits he**

12:37:09 **13 desires.**

12:37:09 **14 So we're looking at what options may exist**

12:37:12 **15 in the future, assuming all things stay the same,**

12:37:16 **16 what options we would have, what it might look**

12:37:19 **17 like, what we might be able to expect if we make an**

12:37:26 **18 exchange in the future.**

12:37:28 **19 Q.** And this is an exchange to a guaranteed

12:37:31 **20** product of Lincoln's, correct?

12:37:33 **21 A. Correct.**

12:37:33 **22 Q.** Okay. And so that product existed in

12:37:36 **23** November 2002, correct?

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12:37:36 **1 A. Correct.**

12:37:38 **2 Q.** Okay. And that product could have been

12:37:40 **3** purchased in November 2002?

12:37:42 **4 A. If John didn't want tax benefits, yes,**

12:37:48 **5 but he opted for the tax benefits.**

12:37:51 **6 Q.** Okay. And -- but you state that the --

12:37:53 **7** towards the end of that letter, you state in the

12:37:57 **8** third last paragraph: I think this is a very

12:37:59 **9** desirable position for you and it should alleviate

12:38:03 **10** some of your fears.

12:38:03 **11** What were his fears?

12:38:05 **12 A. Well, John was concerned about the**

12:38:10 **13 guaranteed illustration column and he preferred**

12:38:14 **14 something that was -- nothing has changed in the**

12:38:18 **15 situation.**

12:38:18 **16 John would rather have guarantees than not**

12:38:22 **17 having guarantees, but ultimately, he wanted to**

12:38:25 **18 figure out how to have his cake and eat it, too.**

12:38:28 **19 So he wanted the deduction and he wanted the**

12:38:30 **20 guarantees, and the challenge was we had to wait a**

12:38:34 **21 couple of years, you know, as I previously**

12:38:37 **22 testified, and waited a couple of years, situation**

12:38:41 **23 changed with the carrier and --**

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12:38:43 **1 Q.** When you say a couple of years, at what

12:38:46 **2** point did things change with the carrier?

12:38:49 **3 A. When we tried to do internal exchanges,**

12:38:53 **4 they wouldn't allow it without surrender charges.**

12:38:56 **5 Q.** Okay. Now, I haven't seen any

12:38:59 **6** documents prior to 2014 where there was discussions

12:39:01 **7** with the carrier about internal exchanges. Were

12:39:03 **8** there any before that date?

12:39:04 **9 A. I don't know if there were or not.**

12:39:06 **10 Q.** Do you know for sure that there were?

12:39:08 **11 A. No, I don't.**

12:39:09 **12 Q.** So it's possible that the first time

12:39:11 **13** that discussion occurred was in 2014 or later?

12:39:14 **14 A. I think it was probably more in 2011,**

12:39:18 **15 worst case scenario, but is it possible? Sure.**

12:39:21 **16 Q.** The last sentence, fair to say, you

12:39:25 **17** state: Of course we don't have to decide about the

12:39:29 **18** conversion for another two or three years.

12:39:32 **19** Why don't you have to decide for another two

12:39:36 **20** or three years?

12:39:36 **21 A. Well, a few reasons: One, Lincoln**

12:39:39 **22 didn't allow conversions for at least two years,**

12:39:43 **23 that was one, and John had to fund the policy and**

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12:39:45 **1 move it, so we had to wait that long, anyway.**
 12:39:49 **2 Q.** Is there any -- is there any
 12:39:52 **3** documentation that they would not allow the
 12:39:54 **4** conversion for two or three years -- or two years?
 12:39:56 **5 A. It was somewhere in the earlier**
 12:39:59 **6 conversations. I actually saw it in one of the**
 12:40:01 **7 exhibits that it was written.**
 12:40:01 **8 So my guess is I had asked before when could**
 12:40:06 **9 we do this. Prior to -- in October of 2002,**
 12:40:11 **10 there's conversations with Lincoln because John**
 12:40:14 **11 wants to know when he could do this, and I recall**
 12:40:16 **12 one of the earlier exhibits saying that they won't**
 12:40:20 **13 allow exchanges for at least 24 months.**
 12:40:23 **14 Q.** So, hypothetically, if an exchange had
 12:40:27 **15** happened after two years, that you're saying was
 12:40:33 **16** the policy of Lincoln's, would the tax benefits
 12:40:36 **17** have been the same for Dr. Repicci?
 12:40:41 **18 A. The tax benefits had already taken**
 12:40:45 **19 place by year two. So anything after year two, he**
 12:40:53 **20 could have possibly had both.**
 12:40:53 **21 Q.** And did you have any correspondence
 12:41:01 **22** with Dr. Repicci after year two to make this
 12:41:05 **23** internal exchange?

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12:41:07 **1 A. I don't remember.**
 12:41:08 **2 Q.** No recollection at all?
 12:41:11 **3 A. No.**
 12:41:11 **4 Q.** So it's possible you didn't have any
 12:41:14 **5** further correspondence about the issue?
 12:41:16 **6 A. It's highly unlikely, but ...**
 12:41:22 **7 Q.** But in your view, this would be a very
 12:41:25 **8** desirable position for the client to have a
 12:41:27 **9** guaranteed policy in place, correct?
 12:41:29 **10 A. Plus the tax benefits, yes, that would**
 12:41:32 **11 be a good situation.**
 12:41:34 **12 Q.** Let me show you what's been marked as
 12:41:51 **13** Exhibit 26. I'll ask you to review and ask if you
 12:42:02 **14** can identify the document.
 12:42:38 **15 A. Okay.**
 12:42:39 **16 Q.** And can you -- is this a letter from
 12:42:48 **17** you to Dr. and Mrs. Repicci?
 12:42:51 **18 A. Yes.**
 12:42:51 **19 Q.** Okay. And can you briefly describe
 12:42:55 **20** what it is?
 12:42:56 **21 A. Before the last document, and this is a**
 12:43:00 **22 conversation about giving him -- explaining to John**
 12:43:06 **23** what his options are with the policy and

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12:43:12 **1 explaining -- giving him an option for securing**
 12:43:16 **2 guaranteed death benefit in the future.**
 12:43:20 **3 Q.** Okay. Now, this is in October 2003.
 12:43:26 **4** Now, in 2002 -- the end of 2002, we had previously
 12:43:31 **5** noted that there was discussions about a guaranteed
 12:43:35 **6** product by Lincoln.
 12:43:38 **7** Now you state in the third paragraph: To
 12:43:40 **8** begin with, we were able to find the Lincoln policy
 12:43:43 **9** that would guarantee over 6 million if you do an
 12:43:47 **10** internal exchange.
 12:43:48 **11** Is that a different guaranteed product than
 12:43:50 **12** the one that was described at the end of 2002?
 12:43:53 **13 A. I don't recall. It was 20 years ago,**
 12:44:01 **14 but given that the death benefit number is**
 12:44:03 **15 different, then I would think -- either it's a**
 12:44:06 **16 different product or the illustration just looks**
 12:44:09 **17 different. When I say, got an updated**
 12:44:13 **18 illustration, that we must have got from Lincoln**
 12:44:16 **19 because I can see it in the back.**
 12:44:21 **20 Q.** I'm looking at page 36, somewhere
 12:44:26 **21** randomly here, and it's --
 12:44:28 **22 A. Actually, can I answer the previous**
 12:44:28 **23 question?**

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12:44:29 **1 Yes, it is a different product. The**
 12:44:31 **2 previous -- in November 2002, we ran an**
 12:44:33 **3 illustration for the SULLPR2, and the one that I'm**
 12:44:38 **4 sending John is the SULLPR3.**
 12:44:41 **5 So Lincoln has a new product available so**
 12:44:44 **6 I'm letting John know there's a new product that**
 12:44:44 **7 actually is different from the one I had mentioned**
 12:44:50 **8 11 months previously.**
 12:44:50 **9 Q.** And it sounds like both products were
 12:44:53 **10** recommended by you?
 12:44:54 **11 A. Recommended we look at them, you know,**
 12:44:57 **12 when the period comes up. I can't get them now so**
 12:45:02 **13 I can't recommend them, but I'm pointing out**
 12:45:06 **14 there's something here that we should have on our**
 12:45:09 **15 radar in the future.**
 12:45:10 **16 Q.** In the November 12th, 2002, letter,
 12:45:14 **17** which is Exhibit 25, you state that this -- I think
 12:45:15 **18** this is a very desirable position.
 12:45:18 **19** Would it also be your belief that the
 12:45:22 **20** product described in Exhibit 26 would also be a
 12:45:26 **21** very desirable position?
 12:45:28 **22 A. Yes.**
 12:45:30 **23 Q.** Okay. And do you know if this internal

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12:45:37 **1** exchange took place?

12:45:38 **2** **A. It did not.**

12:45:39 **3** **Q.** Do you know why?

12:45:40 **4** **A. I'm not sure John made the premium**

12:45:45 **5** **payments that I recommended, first of all.**

12:45:48 **6** **Q.** Can you tell me what premium

12:45:51 **7** recommendations you made?

12:45:52 **8** **A. I recommended that he pay a total of**

12:45:55 **9** **1.8 million in, and I don't know if all 1.8 was**

12:45:59 **10** **actually paid or if it was 1.2.**

12:46:07 **11** **And I could just may be getting confused**

12:46:11 **12** **with the 1.2 that was paid with the Mass, or that**

12:46:14 **13** **John didn't pay the full. I can't recall, so that**

12:46:15 **14** **could be part of the reason for the reduced**

12:46:18 **15** **performance.**

12:46:19 **16** **Q.** Did you follow up with the client

12:46:23 **17** routinely to see where they were on payment

12:46:26 **18** premiums?

12:46:26 **19** **A. Once this year was -- we did talk about**

12:46:30 **20** **this, but the program got cut short because the tax**

12:46:36 **21** **law changed, and I can't remember if John got the**

12:46:41 **22** **money in on time or not.**

12:46:42 **23** **Q.** Now, it's my understanding that the --

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12:47:00 **1** the amount for premiums paid with Lincoln was --

12:47:05 **2** total premiums was 1.2 million, and what you're

12:47:10 **3** saying, if I understand you correctly, is that

12:47:11 **4** you're not certain but that may be the case?

12:47:14 **5** **A. I believe that to be the case as I'm**

12:47:18 **6** **looking at this, and if he pays 1.2 million and not**

12:47:23 **7** **1.8 million, you couldn't make same -- you couldn't**

12:47:26 **8** **make an exchange for something that was only worth**

12:47:28 **9** **two-thirds as much.**

12:47:29 **10** **So the original assumptions are never going**

12:47:32 **11** **to work when the policy has 33 percent less premium**

12:47:36 **12** **in it. So that was a big reason for the challenge**

12:47:41 **13** **of it since the exact things that were said -- the**

12:47:41 **14** **cash wasn't the same, so you'd have to put money**

12:47:42 **15** **going in.**

12:47:42 **16** **Q.** So you would have had approximately

12:47:46 **17** two-thirds less cash going in since -- if he paid

12:47:50 **18** 1.2 million in premiums and you had originally

12:47:54 **19** anticipated 1.8, you'd have approximately

12:47:57 **20** two-thirds of the value of that to work with.

12:48:01 **21** So is it a fair assumption, looking at

12:48:05 **22** Exhibit 26, third paragraph where you talk about a

12:48:08 **23** Lincoln policy with the guaranteed 6 million, is it

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12:48:11 **1** fair to assume that you would have been able to get

12:48:15 **2** a guaranteed policy at 4 million at that point?

12:48:17 **3** **A. No, because it's more heavy expenses**

12:48:20 **4** **towards the front end. So if he had done -- if he**

12:48:24 **5** **asked me to prepare 600,000 times three to a**

12:48:28 **6** **400,000 times three, then your assumption is**

12:48:30 **7** **correct, it'd be about two-thirds, because he would**

12:48:32 **8** **have started with a lower death benefit amount.**

12:48:49 **9** **If you asked me to compare an illustration**

12:48:56 **10** **with \$600,000 a year for three years and 25 million**

12:49:04 **11** **of death benefit against a policy with \$400,000 a**

12:49:09 **12** **year times three and a death benefit of**

12:49:14 **13** **18 thousand 5, I would say the cash value -- I**

12:49:19 **14** **would say the numbers are comparable in that you'd**

12:49:22 **15** **expect two-thirds as much long-term guaranteed**

12:49:27 **16** **death benefit, but because of -- because the client**

12:49:33 **17** **paid two years at 600,000 instead of three and had**

12:49:39 **18** **a death benefit at 25 million, there'd be some**

12:49:45 **19** **additional -- I'm trying to find the right word --**

12:49:53 **20** **shrinkage. It would not be as efficient.**

12:49:58 **21** **So 600,000 times two -- 600,000 a premium**

12:50:03 **22** **times two years is not the same as 400,000 times**

12:50:08 **23** **three.**

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12:50:08 **1** **So super longwindedly, I'm answering**

12:50:12 **2** **counsel's question to say 600 times two does not**

12:50:16 **3** **necessarily mean we could guarantee two-thirds of**

12:50:19 **4** **the 6 million that's in the letter. Sorry that's**

12:50:22 **5** **so long.**

12:50:22 **6** **Q.** Okay. So I understand it then, in

12:50:33 **7** October of 2003, even if something less than 1.8

12:50:39 **8** million had been paid in premiums into Lincoln 026,

12:50:45 **9** and I believe we're at the understanding it was

12:50:47 **10** 1.2 million total, there was still a guaranteed

12:50:50 **11** policy in place that would have been available to

12:50:53 **12** the client or --

12:50:55 **13** **A. The fact that the client paid in less**

12:50:59 **14** **does not mean that they couldn't make an exchange,**

12:51:02 **15** **it just means that all the assumptions I made are**

12:51:06 **16** **not valid.**

12:51:08 **17** **All the predicates, or assumptions, or**

12:51:10 **18** **illustrations I gave don't apply because the client**

12:51:14 **19** **didn't do what I recommended. We have less money**

12:51:16 **20** **to play with.**

12:51:17 **21** **Q.** And when -- can you tell me more about

12:51:22 **22** the tax change that occurred?

12:51:24 **23** **A. The valuation -- I can't remember the**

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12:51:30 **1 notice, but there was a notice that the valuation**
 12:51:36 **2 of policies was going to change 2002 dash something**
 12:51:43 **3 or 2003 dash something, that the valuation of**
 12:51:46 **4 policies would change.**

12:51:47 **5 So all the original illustrations, all the**
 12:51:51 **6 discussions we threw out with numbers all ended up**
 12:51:54 **7 getting tweaked, and you can tell by the premium**
 12:51:58 **8 payment in the policies, MassMutual was originally**
 12:52:00 **9 illustrated at 400,000 times three, John escalated**
 12:52:05 **10 to 600,000 times two to get two premiums in and to**
 12:52:10 **11 remove the policy in -- at the end of 2003.**

12:52:12 **12 With Lincoln, he did 600,000 times two**
 12:52:16 **13 instead of what I recommended, which was -- later**
 12:52:20 **14 was pay more money in. Second year -- so this is**
 12:52:27 **15 all about the tax law change.**

12:52:29 **16 The valuation of the policies, which John**
 12:52:31 **17 ended up getting a massive tax savings, that was**
 12:52:35 **18 the valuation of policies on both plans, that**
 12:52:41 **19 changed.**

12:52:42 **20 Q. So at what point did you learn that**
 12:52:51 **21 Dr. Repicci did not make a third payment of 600,000**
 12:52:55 **22 to the 026 policy?**

12:52:57 **23 A. I don't remember. Probably right after**
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12:52:59 **1 the year it happened, right after the premium**
 12:53:02 **2 notice came.**

12:53:02 **3 Q. And would you have been in**
 12:53:05 **4 communication with him about that?**

12:53:06 **5 A. Definitely.**

12:53:07 **6 Q. And what did you say?**

12:53:08 **7 A. I can't remember. It was 18 years ago.**

12:53:12 **8 The conversation would -- I can't remember at this**
 12:53:18 **9 point. My speculation on that one is John paid**
 12:53:28 **10 less and said, we'll figure it out.**

12:53:31 **11 Q. And is that something you would have**
 12:53:35 **12 documented in writing?**

12:53:36 **13 A. Obviously I didn't.**

12:53:43 **14 Q. Would you normally have?**

12:53:44 **15 A. In 2003, probably not.**

12:53:48 **16 Q. Within the first five years of**
 12:54:00 **17 ownership of the 026 policy, do you recall any**
 12:54:05 **18 conversations other than those reflected in**
 12:54:09 **19 Exhibits 25 and 26 about any concerns related to**
 12:54:12 **20 the performance of the 026 policy?**

12:54:15 **21 A. Not specifically, but when -- we had**
 12:54:24 **22 conversations around the -- when we had**
 12:54:27 **23 conversations around the previous exhibits with**

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12:54:31 **1 relation to his estate planning and introducing him**
 12:54:35 **2 to David for the license executive benefit, John**
 12:54:38 **3 did bring up, I'm happy to do some more planning,**
 12:54:41 **4 but I want to talk about this policy.**

12:54:43 **5 Q. And what did you tell him about this**
 12:54:45 **6 policy, the 026 policy?**

12:54:46 **7 A. We had phone calls and talked about the**
 12:54:47 **8 illustrations and what are we expecting and where**
 12:54:51 **9 we are, and obviously the end result was to keep it**
 12:54:54 **10 as is and see what happens.**

12:54:55 **11 Q. And were there any written documents to**
 12:54:57 **12 that effect?**

12:54:58 **13 A. I don't have any in my records, so if**
 12:55:02 **14 there were, I don't seem to have them.**

12:55:02 **15 Q. Would you have been concerned that**
 12:55:04 **16 Dr. Repicci contributed 1.2 million rather than the**
 12:55:09 **17 1.8 into the 026?**

12:55:12 **18 A. Sure, which was part of the discussion**
 12:55:15 **19 we had with Hy, Celia, and David, and John about**
 12:55:18 **20 his need for more insurance. So he wasn't going to**
 12:55:21 **21 have as much insurance because he put less money**
 12:55:23 **22 in, so that also was part of the discussion of,**

12:55:25 **23 John, we need more money for estate planning, and**
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12:55:28 **1 that initiated that conversation.**

12:55:29 **2 Q. Now, we've seen this prior**

12:55:33 **3 documentation that showed that you gave fairly**
 12:55:34 **4 explicit instruction about payment of premiums in**
 12:55:39 **5 the MassMutual and the Lincoln 026 policy.**

12:55:45 **6 Was this the extent of the recommendation**
 12:55:49 **7 about payment on the 026 policy and the records we**
 12:55:55 **8 see now, Exhibit 26?**

12:55:57 **9 MR. TRACY: Object to the form.**

12:55:58 **10 THE WITNESS: I'm not sure what you're**
 12:55:59 **11 saying.**

12:56:00 **12 BY MR. MOORE:**

12:56:00 **13 Q. Well, do you follow up -- obviously,**
 12:56:02 **14 earlier you were tracking what the client was doing**
 12:56:06 **15 in terms of payment, you want to make sure the**
 12:56:09 **16 policies are funded; that's fairly important I**
 12:56:12 **17 would think from an insurance agent perspective or**
 12:56:14 **18 a planning perspective.**

12:56:16 **19 You would want to make sure, I'm assuming,**
 12:56:18 **20 that payments were paid pursuant to the plan that**
 12:56:22 **21 was discussed and in place. What steps did you**
 12:56:26 **22 take, if any, to be sure that Dr. Repicci was going**
 12:56:29 **23 to make the necessary premium payments?**

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12:56:32 **1 A. Beyond advising him to do so in 26?**
 12:56:40 **2 Q.** Yes, was there any further follow up to
 12:56:42 **3** this letter?
 12:56:43 **4 A. Certainly --**
 12:56:49 **5 MR. TRACY:** Answer -- I'll leave that
 12:56:52 **6** question.
 12:56:52 **7 THE WITNESS:** The following year, there was
 12:56:55 **8** discussion about removing the policy, how to remove
 12:56:57 **9** it, setting up the trust with Celia Clark.
 12:56:59 **10** There was communication in the earlier
 12:57:03 **11** exhibits between me and Hy Polakoff, between me and
 12:57:08 **12** John, and at that time period in time, I'm certain
 12:57:10 **13** John and I were talking and the options were, are
 12:57:13 **14** we going to put more money in the policy now, or
 12:57:16 **15** are we going to leave it where it is? I'm sure we
 12:57:17 **16** had that conversation.
 12:57:18 **17** We planned on putting in so much, you didn't
 12:57:22 **18** put it in. Should we put more in or should we put
 12:57:26 **19** less in? And at the end of the day, my
 12:57:29 **20** recollection on this is we thought that policy was
 12:57:34 **21** going to have a 700,000 valuation upon withdrawal,
 12:57:38 **22** I think it ended up having a 200,000 valuation upon
 12:57:38 **23** withdrawal, which -- I put in six, but it cost me

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12:57:41 **1** five more, I'm not getting a lot of compression,
 12:57:44 **2** I'll just skip it. That's my recollection of how
 12:57:46 **3** that conversation probably went.
 12:57:48 **4 BY MR. MOORE:**
 12:57:49 **5 Q.** What about following up with converting
 12:57:52 **6** into a guaranteed policy?
 12:57:53 **7 A. We certainly -- I shouldn't say**
 12:58:00 **8 certainly. I'd imagine we had conversations. I**
 12:58:04 **9 can recall the estate planning conversation with**
 12:58:06 **10 the previous exhibit, and I recall John saying,**
 12:58:08 **11 let's talk about this policy and get comfortable**
 12:58:12 **12 with it first. I don't want to buy more policies**
 12:58:14 **13 until I'm comfortable with where we are.**
 12:58:16 **14 Q.** Just for my clarification, which
 12:58:19 **15** policies are you talking about now?
 12:58:20 **16 A. So when I sent the estate planning**
 12:58:22 **17 e-mail earlier where you had asked me -- I can't**
 12:58:26 **18 remember what exhibit it was, what is this memo,**
 12:58:30 **19 and did he ever do this, and I said no. I can't**
 12:58:31 **20 remember if it was 14, or one of the previous**
 12:58:34 **21 exhibits.**
 12:58:34 **22 I said, no, we didn't do that estate plan.**
 12:58:37 **23 I can remember having a conversation about estate**

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12:58:40 **1 planning with John and Hy and Celia who all said**
 12:58:45 **2 John needs more insurance, and John saying, I'm**
 12:58:47 **3 happy to talk about more insurance, but let's look**
 12:58:48 **4 at the policy that I have.**
 12:58:49 **5 Q.** And when you say, let's look at the
 12:58:52 **6** policy I have, you're talking about the 026 policy?
 12:58:53 **7 A. I am talking about the 026 policy.**
 12:58:55 **8 Q.** Okay. All right. Now I think I
 12:58:58 **9** understand.
 12:59:04 **10** So wouldn't it have been normal to have some
 12:59:10 **11** kind of follow-up communication in writing about
 12:59:13 **12** the need to -- or at least the recommendation to do
 12:59:19 **13** the internal exchange for a guaranteed product?
 12:59:25 **14** I mean, it does get mentioned in 2002, it
 12:59:29 **15** gets mentioned in 2003. Wouldn't it have been
 12:59:31 **16** normal for there to be follow up on that in
 12:59:35 **17** writing?
 12:59:35 **18 MR. TRACY:** Object to the form.
 12:59:36 **19 THE WITNESS:** Normal? I don't think there's
 12:59:41 **20** anything normal about this case, so I don't -- we
 12:59:46 **21** talked about things when John wanted to talk about
 12:59:49 **22** them.
 12:59:49 **23 BY MR. MOORE:**

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12:59:52 **1 Q.** Well, do you think it's in the best
 12:59:55 **2** interest of the client to let them know that as
 13:00:00 **3** things stand, let's say, in 2005, that the policy
 13:00:08 **4** as written and as funded is going to lapse well
 13:00:13 **5** before age 100, it would be helpful for the client
 13:00:17 **6** to be aware of that?
 13:00:18 **7 A. So what's the question?**
 13:00:22 **8 Q.** Would it be helpful for the client to
 13:00:24 **9** be aware of that fact?
 13:00:25 **10 A. Yes, the client was aware of that fact.**
 13:00:28 **11 Q.** Was that information given to the
 13:00:31 **12** client in writing?
 13:00:32 **13 A. From Lincoln in writing, verbally with**
 13:00:37 **14 conversations with me.**
 13:00:37 **15 Q.** Was there anything in writing from you
 13:00:40 **16** to that effect?
 13:00:40 **17 A. Not that I seen.**
 13:00:41 **18 Q.** Was there anything in writing from you
 13:00:45 **19** checking on the status of the internal exchange of
 13:00:50 **20** the Lincoln policy to a guaranteed policy?
 13:00:54 **21 A. I haven't seen anything in my searches.**
 13:00:58 **22 I recall having a conversation with John at some**
 13:01:01 **23 point in '05-'06 about what we could do and him**

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13:01:04 **1** deciding to stay where he was.

13:01:07 **2** **I don't remember why, but I can't imagine he**

13:01:09 **3 would have bought a policy from David that wasn't**

13:01:13 **4 guaranteed if he wasn't comfortable with the**

13:01:19 **5 current assumption product, meaning a**

13:01:22 **6 non-guaranteed product.**

13:01:23 **7 Q.** Was there anything further in writing

13:01:30 **8** after October 14th, 2003, and I'm referencing

13:01:34 **9** Exhibit 26 right now, checking on the status of

13:01:38 **10** Dr. Repicci's determination with regard to the two

13:01:42 **11** options presented by you?

13:01:44 **12 A. Not that I can recall.**

13:01:47 **13 Q.** So isn't it a fairly important duty of

13:01:54 **14** the planner, the financial planner, to make sure

13:01:58 **15** that the plan is implemented?

13:02:00 **16 MR. TRACY:** Object to the form.

13:02:01 **17 THE WITNESS:** Well, two things: One, I

13:02:06 **18** wasn't in a financial planner capacity, I was in an

13:02:10 **19** insurance agent capacity at the time, and John paid

13:02:14 **20** less premium than he was supposed to, I'm quite

13:02:19 **21** certain we had a conversation about that, and

13:02:23 **22** explained what that would do and John seemed happy

13:02:26 **23** with that, otherwise he would have put more premium

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13:02:29 **1** in.

13:02:30 **2 BY MR. MOORE:**

13:02:30 **3 Q.** Let's get back to something you just

13:02:32 **4** said. You said you were in a -- you were not in a

13:02:34 **5** planning capacity, you were in an insurance agent

13:02:37 **6** capacity. Did Dr. Repicci first reach out to you

13:02:41 **7** in the capacity of an insurance agent?

13:02:46 **8 A. I don't know what capacity he thought**

13:02:50 **9 it was. He read an article and called me, so I**

13:02:53 **10 don't know what he was thinking.**

13:02:54 **11 Q.** And you wouldn't describe the plan that

13:02:58 **12** you put forth with Dr. Repicci as some sort of

13:03:02 **13** financial plan?

13:03:03 **14 A. When I think of financial plan, I think**

13:03:05 **15 of budgeting and a very holistic situation. John**

13:03:10 **16 didn't -- I never looked at John's investments, I**

13:03:14 **17 never looked at John's retirement plan other than**

13:03:18 **18 looking at the tax issues. He wanted me to look at**

13:03:19 **19 that specific thing, I looked at anything else. At**

13:03:22 **20 that time --**

13:03:22 **21 Q.** Wait a minute. If you're looking at

13:03:23 **22** tax issues, do you view that as the role of an

13:03:26 **23** insurance agent, or the role of financial

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13:03:29 **1** advisement or financial planning?

13:03:32 **2 A. In this specific situation, I mean, in**

13:03:37 **3 general, planning taxes are covered in financial**

13:03:40 **4 planning, in this specific situation, John seemed**

13:03:43 **5 to be very interested in the pension, the solution**

13:03:46 **6 happened to be insurance, and when asked how we get**

13:03:49 **7 paid, we get paid as the insurance agent. So I**

13:03:52 **8 think that was relatively --**

13:03:54 **9 Q.** Okay.

13:03:55 **10 A. -- maybe it wasn't.**

13:03:56 **11 Q.** When I'm using the word financial

13:03:59 **12** planning, I'm using financial planning, financial

13:04:03 **13** advisor interchangeable and speaking in the broadest

13:04:07 **14** terms.

13:04:07 **15** Isn't it fair to say that the context in

13:04:12 **16** which this insurance product was purchased was in

13:04:17 **17** the context of financial advisement to Dr. Repicci

13:04:20 **18** with regard to concern about taxes?

13:04:25 **19 A. I think the overall plan was, but**

13:04:29 **20 different people handled different components. So**

13:04:30 **21 Hy handled tax, Celia handled legal, Mandell**

13:04:35 **22 handled legal, I handled insurance.**

13:04:36 **23 So I think he got that advice, but you can**

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13:04:39 **1 use the two terms interchangeably, but they have a**

13:04:43 **2 very different meaning to someone who is now a**

13:04:45 **3 certified financial planner. At the time, it was**

13:04:46 **4 very different than what I was doing at the time**

13:04:49 **5 then. So he got financial advice from a variety of**

13:04:51 **6 people, but I wasn't opining on the tax issues.**

13:04:54 **7 Q.** But you were opining on the original

13:04:59 **8** form or proposal of the plan, correct?

13:05:02 **9 A. The insurance piece of it, sure, how**

13:05:06 **10 the insurance would fit into it.**

13:05:07 **11 Q.** How the insurance would fit into a

13:05:09 **12** plan --

13:05:10 **13 A. Yes.**

13:05:10 **14 Q.** -- however, but the plan was something

13:05:13 **15** that was put forth by you initially, correct?

13:05:16 **16 A. We discussed it originally, but I**

13:05:20 **17 wouldn't say I gave him tax advice. I deferred**

13:05:23 **18 that to other people.**

13:05:25 **19 Q.** Correct, but you put together a

13:05:28 **20** proposal whereby insurance was a component of a

13:05:33 **21** larger financial plan? You did not -- strike that.

13:05:39 **22** Did Dr. Repicci come to you and simply ask

13:05:42 **23** to purchase insurance from you?

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13:05:45 **1 A. No.**
 13:05:45 **2 Q.** Did Dr. Repicci approach you and ask
 13:05:48 **3** for advice with regard to reducing tax burden?
 13:05:55 **4 A. Relative to his retirement plan, yes.**
 13:05:57 **5 Q.** Okay. So in order to facilitate that
 13:06:04 **6** plan, putting insurance in place was an important
 13:06:10 **7** component, correct?
8 A. Yes.
 13:06:11 **9 Q.** So in order for the plan to be valid
 13:06:14 **10** and be effectual, it was important that the
 13:06:20 **11** insurance be put in place correctly; is that a
 13:06:22 **12** correct statement?
 13:06:23 **13 A. Yes.**
 13:06:23 **14 Q.** Okay. So would it have been normal for
 13:06:30 **15** an advisor in that situation that was handling the
 13:06:35 **16** insurance component to make sure that the premiums
 13:06:38 **17** were paid as recommended to make the plan work?
 13:06:44 **18 A. I can't make the client -- I would say,**
 13:06:46 **19 no, it's not normal to make the client do anything.**
 13:06:49 **20 I don't have a single financial plan I've ever done**
 13:06:51 **21 that a client followed --**
 13:06:53 **22 Q.** Is it normal --
 13:06:55 **23 A. -- completely.**

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13:06:56 **1 Q.** Is it normal to advise a client --
 13:06:56 **2 A. Sure.**
 13:06:56 **3 Q.** -- if steps are not being taken?
 13:06:58 **4 A. It's normal to advise the client of the**
 13:07:01 **5 possible ramifications of their actions, and you**
 13:07:05 **6 can take option A or option B, this is going to**
 13:07:08 **7 happen, that's normal for sure, and I'm confident**
 13:07:11 **8 we had those conversations.**
 13:07:13 **9 Q.** And would it be normal to put something
 13:07:16 **10** in writing about concerns with any deficiency on
 13:07:20 **11** the part of the client in terms of what they were
 13:07:24 **12** required to do?
 13:07:24 **13 A. What was normal with John was things he**
 13:07:30 **14 wanted to think about, he wanted something in**
 13:07:32 **15 writing, and I would give him things he could share**
 13:07:37 **16 with Hy, or he could share with Lori, or he could**
 13:07:38 **17 look at and get back to me. When we came to a**
 13:07:40 **18 conclusion about the accounts, we would just do it.**
 13:07:42 **19 It was not normal for me to have summary**
 13:07:46 **20 e-mails that we just talked orally, or we just**
 13:07:48 **21 talked about this, here's all we just talked about.**
 13:07:52 **22 That wasn't done.**
 13:07:52 **23 Q.** But if you had concerns about

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13:07:56 **1** implementation, proper implementation of the
 13:07:58 **2** policy, would there not be written follow-up about
 13:08:02 **3** those concerns?
 13:08:02 **4 A. In 2003, there weren't any concerns**
 13:08:07 **5 about -- in 2003, the -- my big recollection of**
 13:08:13 **6 this was he paid less, why did you pay less?**
 13:08:19 **7 You're going to end up with a less death benefit.**
 13:08:22 **8 Okay, fine, that's fine. It's not a guaranteed**
 13:08:25 **9 product, we'll figure it out later. Okay. He's**
 13:08:28 **10 the client.**
 13:08:30 **11 Q.** So it's your position that he
 13:08:34 **12** unilaterally made a decision not to make additional
 13:08:38 **13** payments, and -- is that correct?
 13:08:41 **14 A. Yes.**
 13:08:41 **15 Q.** Okay. And did you follow up with him
 13:08:47 **16** at all about whether or not to proceed on an
 13:08:53 **17** internal exchange to a guaranteed product?
 13:08:55 **18 A. I can't find anything in writing, as I**
 13:09:02 **19 testified earlier. I'm confident we revisited this**
 13:09:06 **20 in 2005-2006, and obviously --**
 13:09:07 **21 Q.** Would it have been in the client's best
 13:09:10 **22** interest to be in a guaranteed product at that
 13:09:12 **23** point after two years?

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13:09:13 **1 A. Maybe.**
 13:09:14 **2 Q.** And so did you have any follow-up
 13:09:23 **3** discussion -- correspondence with the client about
 13:09:26 **4** that possibility?
 13:09:27 **5 A. As I said earlier --**
 13:09:29 **6 Q.** After 2003.
 13:09:30 **7 A. I'm certain we talked about it in**
 13:09:33 **8 2005-2006.**
 13:09:34 **9 Q.** But you don't recall any
 13:09:39 **10** correspondence; is that fair?
 13:09:40 **11 A. I don't recall any correspondence about**
 13:09:43 **12 it.**
 13:09:43 **13 Q.** And do you believe Dr. Repicci was
 13:09:46 **14** fully away that this policy was likely to lapse
 13:09:49 **15** well before age 100?
 13:09:51 **16 A. I don't -- I don't know what he was**
 13:09:55 **17 thinking at that time. I can't believe that we**
 13:10:00 **18 didn't discuss an internal exchange to a guaranteed**
 13:10:04 **19 product with the number that he liked.**
 13:10:07 **20 My guess on this one is the death benefit**
 13:10:09 **21 wasn't enough and the numbers weren't looking the**
 13:10:14 **22 way they were, interest rates had dropped. That**
 13:10:20 **23 had to be my -- I'd be surprised if that weren't**

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13:10:22 **1** what happened, because why else would I not make an
2 internal exchange?
13:10:24 **3** I'm an agent. I get paid again if he does
13:10:27 **4** an internal exchange. I have financial insensitive
13:10:31 **5** to actually exchange him and I didn't. So if he
13:10:35 **6** wants it and if I get paid if he does it, I don't
13:10:39 **7** get paid if he doesn't, why wouldn't we do it?
13:10:40 **8** Q. Do you always get paid if there's an
13:10:42 **9** external exchange?
13:10:43 **10** A. Normally.
13:10:44 **11** Q. What's a charge back?
13:10:46 **12** A. A charge back is in the first 12 months
13:10:49 **13** if you -- in the first 12 months of buying a policy
13:10:52 **14** the client makes -- either cancels the policy or
13:10:57 **15** shortens the policy or does a 1035, and it's
13:11:00 **16** usually within the first 12 months.
13:11:01 **17** Q. And what does that mean, what is a
13:11:03 **18** charge back?
13:11:03 **19** A. The agent has to pay back the
13:11:06 **20** commission -- actually, if the client dies in the
13:11:10 **21** first year or cancels the policy, then they charge
13:11:13 **22** you back.
13:11:13 **23** Some companies will charge it back in the
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13:11:34 **1** first 12 months, some companies don't have any
13:11:38 **2** charge back period.
13:11:39 **3** Q. Do you recall if in fact the Lincoln
13:11:47 **4** charge back period was 24 months?
13:11:49 **5** A. I don't recall.
13:11:49 **6** Q. Is it possible?
13:11:51 **7** A. It's possible.
13:11:53 **8** Q. I'm going to show you what's been
13:12:28 **9** marked as Exhibit 29. And in particular, I'll
13:13:08 **10** point your attention to the first half of the first
13:13:12 **11** page.
13:13:12 **12** A. Sure.
13:13:14 **13** Q. Are you familiar with this document?
13:13:16 **14** A. I mean, it's obviously been e-mailed to
13:13:24 **15** me, I don't recall it.
13:13:24 **16** Q. Can you tell me who Lindsey Ober is?
13:13:30 **17** A. Lindsey Ober, looks like she worked
13:13:34 **18** with Michael Scott in Connecticut and handled a
13:13:38 **19** bunch of underwriting and administration work, and
13:13:41 **20** this looks like this was in 2014 trying to get her
13:13:44 **21** to help with the 144 policy and I'm asking her to
13:13:50 **22** go ahead and see what are our options with this
13:13:54 **23** policy.

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13:13:54 **1** And this is about a bunch of different
13:13:56 **2** options and she's telling me that we cannot reduce
13:14:00 **3** the death benefit, which was one of the options in
13:14:03 **4** the previous e-mail to -- or letter to Dr. Repicci,
13:14:05 **5** that there's some tax guidelines that they can't
13:14:10 **6** reduce the death benefit to the number we want to
13:14:14 **7** to carry to 95, so that option is off the table.
13:14:18 **8** Q. Okay. Let me interject if you don't
13:14:21 **9** mind.
13:14:21 **10** A. Sure.
13:14:22 **11** Q. The question I have for you is she
13:14:24 **12** appears to be -- Lindsey Ober appears to be with
13:14:29 **13** MSF Advisors; is that correct?
13:14:29 **14** A. Yes.
13:14:30 **15** Q. Can you tell me what MSF Advisors is?
13:14:32 **16** A. It's a financial firm that a colleague
13:14:35 **17** of mine started and he said Lindsey was great at
13:14:40 **18** working with insurance companies and I had
13:14:42 **19** mentioned I was trying to solve a problem, and he
13:14:45 **20** said, let's see if Lindsey can help you. He
13:14:49 **21** thought she could help me, so I asked her look at
13:14:50 **22** some stuff.
13:14:51 **23** Q. Can you be a little more explicit about
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13:14:54 **1** the nature of what MSF does? How would you
13:14:57 **2** classify them as a company?
13:14:57 **3** A. Insurance agent, investment advisory
13:15:01 **4** firm, works for clients.
13:15:03 **5** Q. And it looks like you had made a
13:15:06 **6** question -- this was within context of the 144
13:15:10 **7** policy?
13:15:10 **8** A. This is the second policy, correct.
13:15:11 **9** Q. The second policy. But you ask if
13:15:13 **10** there's a charge back if you do a face reduction?
13:15:17 **11** A. Correct.
13:15:17 **12** Q. And we're how many years past the
13:15:19 **13** original date there? So we're some --
13:15:22 **14** A. Eight.
13:15:23 **15** Q. Eight years or so. Okay. And the
13:15:25 **16** response to you, this appears to say that Lincoln's
13:15:28 **17** policy is there's a charge in the first two years?
13:15:32 **18** A. This particular product, yes.
13:15:34 **19** Q. So it's -- is it possible that there
13:15:37 **20** may have been a two-year charge back policy with
13:15:40 **21** regard to the 026 policy?
13:15:42 **22** A. It's possible.
13:15:42 **23** Q. It's possible. Okay. So it wouldn't

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13:15:44 **1** be out of line if that were the case? It wouldn't
 13:15:48 **2** be unusual, let me say, if that were the case?
 13:15:51 **3** **A. I think one is usual, so I guess it**
 13:15:54 **4 would be a little unusual, but ...**
 13:15:57 **5** **Q.** I'd like to show you what's been marked
 13:16:33 **6** as Exhibit 27. I'll ask you to review and see if
 13:16:37 **7** you can identify that document for me.
 13:16:39 **8** **A. Okay.**
 13:17:20 **9** **Q.** Now, is this -- is there anything
 13:17:22 **10** different in this document in terms of the --
11 strike that.
 13:17:27 **12** Is the guaranteed policy being discussed in
 13:17:31 **13** this document the same as we previously talked
 13:17:35 **14** about with regard to Exhibit 26, I believe?
 13:17:43 **15** **A. It's a different product.**
 13:17:45 **16** **Q.** Okay. Can you describe this product?
 13:17:50 **17** **A. Well, this is -- so they have an SUL4**
 13:17:58 **18 and this is going back to the first -- this is**
 13:18:05 **19 the -- this is showing a hypothetical exchange in**
 13:18:07 **20 the future to the SULLPR3.**
 13:18:11 **21** **We refer to SPLR -- we refer to the LPR3 and**
 13:18:18 **22 the LPR4 in two different previous exhibits, so**
 13:18:22 **23 this refers to one of them, but not the more -- not**
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13:18:25 **1 the more recent.**
 13:18:26 **2** **Q.** Okay. So this would have been the
 13:18:30 **3** SUL3, I believe, is the policy that you looked at
 13:18:33 **4** back in 2002?
 13:18:35 **5** **A. The SULLPR3, correct.**
 13:18:40 **6** **Q.** Okay.
 13:18:45 **7** **A. And this assumes that he pays**
 13:18:47 **8 1.2 million more in premium, which he didn't do,**
 13:18:50 **9 which means all bets are off on -- you know, on the**
 13:18:53 **10 numbers.**
 13:19:04 **11** **Q.** I'll note just for the record that
 13:19:13 **12** page 2 of this document is a different document it
 13:19:17 **13** appears than is attached to the fax at the time.
 13:19:30 **14** **A. That's the letter we referenced**
 13:19:32 **15 earlier.**
 13:19:33 **16** **Q.** Yeah. Okay. So is there any time in
 13:19:52 **17** which you began to feel uncomfortable about doing
 13:19:56 **18** an internal exchange to a guaranteed benefit?
 13:19:59 **19** **A. No, we -- we tried and not succeeded**
 13:20:09 **20 along the way, so it's been --**
 13:20:11 **21** **Q.** Well, did you try at all before 2014?
 13:20:13 **22** **A. We certainly looked at it because it**
 13:20:18 **23 would have happened in 2005-2006, and it didn't**
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13:20:21 **1 happen and I don't know why.**
 13:20:24 **2** **Q.** But you have no documentation to that
 13:20:27 **3** effect?
 13:20:27 **4** **A. I don't, no.**
 13:20:28 **5** **Q.** Is that a no?
 13:20:29 **6** **A. That's a no. No, I do not.**
 13:20:35 **7** **Q.** Would it have been in the best interest
 13:20:38 **8** of the client to have a guaranteed policy put in
 13:20:42 **9** place after the two-year period had elapsed?
 13:20:44 **10** **A. I can't say.**
 13:20:45 **11** **Q.** And let me ask you this: The -- the
 13:21:00 **12** policy that's described herein, the SUL-3, which
 13:21:05 **13** you discover in 2002, was available to be purchased
 13:21:12 **14** in 2002.
 13:21:18 **15** You had already had an application in place
 13:21:20 **16** for the dash 4 product, which is what was
 13:21:25 **17** purchased, but you became aware of the dash 3
 13:21:29 **18** product, which was the guaranteed product.
 13:21:31 **19** So it's possible that product could have
 13:21:34 **20** been put in place in place of the dash 4 product;
 13:21:40 **21** is that correct?
 13:21:40 **22** **A. It's possible.**
 13:21:45 **23** **Q.** And why was that not done?
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13:21:47 **1** **A. As I testified earlier, the cash -- the**
 13:21:52 **2 cash surrender value, the valuation for tax**
 13:21:55 **3 purposes, would have been too high, otherwise, why**
 13:21:59 **4 wouldn't I have done that?**
 13:22:00 **5** **So we had to look at this for John, and**
 13:22:03 **6 ultimately, the decision was -- we had two**
 13:22:06 **7 products. We had a Mass product which had**
 13:22:09 **8 guarantees and had very low valuation for tax**
 13:22:12 **9 purposes.**
 13:22:12 **10** **On the Lincoln side, we picked something**
 13:22:13 **11 that didn't have guarantees, but had really low**
 13:22:16 **12 value for tax purposes, and they had a guaranteed**
 13:22:18 **13 product at the same time. The reason we chose the**
 13:22:21 **14 product we had is because John chose tax savings**
 13:22:25 **15 over guarantees. That was -- that was the**
 13:22:27 **16 conversation.**
 13:22:27 **17** **Q.** After the two-year period, he's got all
 13:22:30 **18** the tax savings that he needed?
 13:22:33 **19** **A. Correct.**
 13:22:33 **20** **Q.** So he'd be in a far better position to
 13:22:37 **21** be in a guaranteed product at that point; is that
 13:22:38 **22** correct?
 13:22:38 **23** **A. After -- after year three, the taxes**
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13:22:43 **1** are no longer part of the situation, it's just the
 13:22:46 **2** performance.
 13:22:46 **3** **Q.** Just the performance?
 13:22:47 **4** **A.** Correct, and given that John has paid
 13:22:49 **5** less cash, he's paid less in, so we don't have the
 13:22:55 **6** same numbers to work with, so all our original
 13:22:58 **7** estimates and projections are off the table since
 13:23:00 **8** he hasn't paid the premium that was recommended,
 13:23:02 **9** now we have to look at what the options are.
 13:23:04 **10** **Q.** So if I understand what you're saying,
 13:23:08 **11** after 2005, the end of 2005, tax is no longer the
 13:23:13 **12** issue --
 13:23:13 **13** **A.** Correct.
 13:23:14 **14** **Q.** -- it's the insurance benefit?
 13:23:16 **15** **A.** Yes.
 13:23:17 **16** **Q.** And there's a question of in a
 13:23:20 **17** guaranteed policy, or even non-guaranteed for that
 13:23:22 **18** matter, what that number would be on the face
 13:23:24 **19** amount because, to date, only 1.2 million has been
 13:23:32 **20** invested as opposed to the 1.8 upon the original
 13:23:36 **21** assumptions were made?
 13:23:37 **22** **A.** Correct.
 13:23:38 **23** **Q.** That being said, was there no warning
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13:23:42 **1** to you -- to the client saying we know that this
 13:23:45 **2** policy is going to lapse well before 100, we can
 13:23:49 **3** get you into a guaranteed policy now, it may be a
 13:23:54 **4** lesser amount, but we need to do it? Was there any
 13:24:01 **5** kind of warning given to the client about that?
 13:24:03 **6** **MR. TRACY:** Objection.
 13:24:04 **7** **THE WITNESS:** There were -- I don't remember
 13:24:07 **8** any warnings with John, it was always giving John
 13:24:11 **9** the information and options.
 13:24:11 **10** And, again, doing an internal exchange would
 13:24:15 **11** benefit him and me if we could make it happen. So
 13:24:19 **12** what happened between 2005 and 2012, '13, '14, we
 13:24:24 **13** didn't get it done not for a lack of looking at it,
 13:24:27 **14** so we had options, but we didn't -- maybe it wasn't
 13:24:30 **15** available in New York. I honestly don't remember.
 13:24:34 **16** John made it clear that he wanted
 13:24:37 **17** guarantees. I would have loved to do an internal
 13:24:41 **18** exchange for him and got paid again if I could have
 13:24:42 **19** made that happen. It didn't get done.
 13:24:45 **20** Go back 15, 16 years, either the product
 13:24:48 **21** wasn't available or the numbers just didn't look
 13:24:51 **22** very good. I can't imagine -- again, John bought a
 13:24:54 **23** very similar product again in 2006. How did he buy
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13:24:57 **1** that product in 2006 if he's not comfortable with
 13:25:01 **2** the 026 policy the way it is.
 13:25:03 **3** **BY MR. MOORE:**
 13:25:03 **4** **Q.** Didn't he intend to purchase a
 13:25:05 **5** guaranteed product in 2006?
 13:25:06 **6** **A.** Intend? I don't know that's the --
 13:25:10 **7** **Q.** Wasn't the application for a guaranteed
 13:25:12 **8** product in 2006?
 13:25:13 **9** **A.** I didn't get the application, so I
 13:25:15 **10** don't know.
 13:25:15 **11** **Q.** So it's your testimony that because he
 13:25:23 **12** bought another product in 2006, he must have been
 13:25:27 **13** okay with the performance of the prior policy; is
 13:25:30 **14** that correct?
 13:25:30 **15** **MR. TRACY:** Objection.
 13:25:32 **16** **THE WITNESS:** It would seem -- it would seem
 13:25:41 **17** strange for John to move forward on something that
 13:25:45 **18** looks a lot like something else he already had if
 13:25:48 **19** he had a problem with it.
 13:25:50 **20** So it seems to me he got pretty comfortable
 13:25:53 **21** with the product in 2006 or '05 and then after
 13:25:59 **22** the -- the illustrations in 2004 and '05 look
 13:26:03 **23** nothing like the illustrations in 2013 because you
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13:26:07 **1** then had a very long history of low credit.
 13:26:09 **2** So the situation in 2014 is a whole lot
 13:26:12 **3** different from the 2006 situation. '06 is not
 13:26:15 **4** quite as great as 2002, '14 was a whole lot worse.
 13:26:19 **5** So --
 13:26:21 **6** **BY MR. MOORE:**
 13:26:22 **7** **Q.** But yet you're advising him in 2002 and
 13:26:24 **8** in 2003 to get into a guaranteed product?
 13:26:27 **9** **A.** I'm not advising him, I'm telling John
 13:26:30 **10** that if he wants guarantees and he wants tax
 13:26:33 **11** savings, it looks like this is a path, and he
 13:26:37 **12** wanted -- can I really do that? And in the
 13:26:40 **13** previous exhibit we have the letter from Lincoln
 13:26:43 **14** that says, yes, we'll let you do this. So there
 13:26:47 **15** are options and I'm trying to give him the
 13:26:49 **16** information to let him make decisions.
 13:26:50 **17** **Q.** I'll put it out if necessary, but I
 13:26:53 **18** believe in some of your prior correspondence in
 13:26:54 **19** 2002, you recommended a certain course of action;
 13:26:58 **20** do you recall doing that or not?
 13:27:00 **21** **A.** From time to time would I recommend
 13:27:02 **22** things? Sure. I can't recommend something in the
 13:27:05 **23** future that I can't -- there's always restrictions
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13:27:10 **1 on -- I don't think I ever said --**
 13:27:11 **2 Q.** No, but you're -- I'm sorry. Finish
 13:27:14 **3** your statement.
 13:27:15 **4 A. I can't recommend something in the**
 13:27:17 **5 future. I can recommend things that I think you**
 13:27:26 **6 should do or consider today. I can't recommend**
 13:27:26 **7 things you're going to do in two years. I can only**
 13:27:26 **8 recommend we'll look at this, I recommend you look**
 13:27:26 **9 at this. So I couldn't make the exchange --**
 13:27:29 **10 Q.** Let me --
 13:27:29 **11 A. -- today for the future.**
 13:27:31 **12 Q.** Let me put it this way: In 2005, the
 13:27:34 **13** end of 2005 when tax was no longer an issue, would
 13:27:39 **14** it be in the client's best interest to be in a
 13:27:42 **15** guaranteed policy --
 13:27:43 **16 MR. TRACY:** Objection.
 13:27:44 **17 BY MR. MOORE:**
 13:27:45 **18 Q.** -- if the intent is for the policy to
 13:27:47 **19** last until age 100?
 13:27:49 **20 A. Maybe there's -- if it's 4 million**
 13:27:54 **21 projected or 1 million 5 guaranteed, who is to**
 13:27:58 **22 say -- what if John died the next year? If he made**
 13:28:00 **23 the change and then he and Lori died in a plane**
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13:28:05 **1 crash the next year, instead he gets 1.6 guaranteed**
 13:28:07 **2 instead of 4.6, that wouldn't have been better.**
 13:28:09 **3 Q.** And according to your calculations at
 13:28:13 **4** the time, would they have been better off than the
 13:28:15 **5** guaranteed policy?
 13:28:18 **6 A. I can't say that they would have or**
 13:28:21 **7 wouldn't have.**
 13:28:21 **8 Q.** Okay. Let me show you what's been
 13:28:47 **9** marked as Exhibit 28.
 13:29:18 **10 A. Is there a specific page --**
 13:29:22 **11 MR. MOORE:** For the record -- okay. For the
 13:29:33 **12** record, in my files, I have what appears to be one
 13:29:39 **13** page of a multi-page correspondence.
 13:29:43 **14 MR. TRACY:** And for the record, that appears
 13:29:44 **15** to be what we had on file at that time. I will
 13:29:49 **16** double-check and see if we can find the missing
 13:29:53 **17** pages, but I don't think we can.
 13:29:55 **18 BY MR. MOORE:**
 13:30:04 **19 Q.** And to the extent you're able to review
 13:30:07 **20** this, do you recognize this letter?
 13:30:08 **21 A. Sure, yes.**
 13:30:09 **22 Q.** And do you believe it to be a letter
 13:30:11 **23** from you?
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13:30:12 **1 A. Yes.**
 13:30:13 **2 Q.** Okay. And if I understand this
 13:30:16 **3** correctly, this is -- you're seeking authorization
 13:30:19 **4** to make the reduction in face values, which will
 13:30:26 **5** allow you to no longer need to make future payments
 13:30:30 **6** for those policies; is that correct?
 13:30:32 **7 A. Yes.**
 13:30:32 **8 Q.** Okay. At that time, you say if you
 13:30:41 **9** wish to make no futures payments to these policies,
 13:30:45 **10** we can reduce the benefits to 4.95 million for
 13:30:50 **11** Lincoln and 4 million for MassMutual; is that
 13:30:54 **12** correct?
 13:30:54 **13 A. 4.595 for Lincoln --**
 13:30:58 **14 Q.** Yes.
 13:30:58 **15 A. For Lincoln's policy.**
 13:30:58 **16 Q.** But you make no indication, you make no
 13:31:01 **17** statement about an additional payment being
 13:31:04 **18** necessary in the Lincoln policy?
 13:31:06 **19 A. There's no -- there's no estimation of**
 13:31:09 **20 future premiums, there's also no -- there's no talk**
 13:31:13 **21 of guarantees or how long it'll last, either.**
 13:31:16 **22 Q.** Correct, but there's no notice to the
 13:31:19 **23** client that there's -- that there's a benefit to
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13:31:24 **1** any additional payment?
 13:31:26 **2 A. No, there's no talk about that.**
 13:31:33 **3 Q.** From a client perspective in reading
 13:31:35 **4** this, would you have any reason to believe that you
 13:31:37 **5** needed to make additional payments?
 13:31:40 **6 A. There's certainly -- there's no**
 13:31:43 **7 discussion about payments. So ...**
 13:31:44 **8 Q.** Okay. I should just -- for the record,
 13:31:52 **9** you say there's no discussion of payments, so was
 13:31:57 **10** there a conclusion you made from that, or is it
 13:32:01 **11** just there was no discussion about payments
 13:32:03 **12** necessary?
 13:32:03 **13 A. There was no discussion about payments**
 13:32:06 **14 necessary.**
 13:32:06 **15 Q.** I just didn't know if there was
 13:32:09 **16** something you wanted to add.
 13:32:42 **17 MR. MOORE:** The time is 12:30. I've got --
 13:32:47 **18** if it's good with you, it might be a good time to
 13:32:50 **19** break for lunch.
 13:32:50 **20 MR. TRACY:** That's fine.
 13:32:51 **21 MR. MOORE:** And then -- well, I'm not going
 13:32:56 **22** to -- can we go off the record.
 13:32:58 **23** (Off the record: 1:32 p.m.)
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14:42:31 **1 BY MR. MOORE:**
 14:42:36 **2 Q.** Mr. Jarvis, can you look again at
 14:42:39 **3** Exhibit 26, and in conjunction with Exhibit 40 --
 14:43:09 **4** off the record again for a minute.
 14:44:36 **5** (Off the record: 2:43 p.m.)
 14:44:36 **6 MR. MOORE:** Okay. Back on the record.
 14:44:39 **7 BY MR. MOORE:**
 14:44:41 **8 Q.** So previously with regard to
 14:44:44 **9** Exhibit 26, I asked you a question about an
 14:44:50 **10** approximation on the amount of guaranteed insurance
 14:45:00 **11** that could be purchased at that time.
 14:45:07 **12** And then I had indicated -- I said, well, if
 14:45:12 **13** only 1.2 in premiums had been paid as opposed to
 14:45:18 **14** the 1.8 originally anticipated, that's roughly
 14:45:20 **15** two-thirds, can you make a rough approximation, and
 14:45:23 **16** I was told, no, you can't really do that for
 14:45:27 **17** various reasons, that the cash value is -- that's
 14:45:30 **18** the significant determining factor or the premium
 14:45:34 **19** payment with the new policy. Excuse me if I may be
 14:45:42 **20** slightly misconstruing it. I don't mean for that
 14:45:45 **21** to be definitive in terms of the explanation at
 14:45:47 **22** all.
 14:45:47 **23** But, in any event, in looking at that, can
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14:45:50 **1** we not accurately calculate what in fact the amount
 14:45:56 **2** of guaranteed insurance would have been?
 14:45:59 **3** My understanding is that according to your
 14:46:06 **4** October 14th, 2003, letter, Exhibit 26, that you
 14:46:10 **5** indicated that the cash value of the policy could
 14:46:15 **6** then be used in effect as a premium for the
 14:46:19 **7** guaranteed policy to be purchased, and that if you
 14:46:23 **8** did that, you would end up with a policy that was
 14:46:28 **9** worth over \$6 million; did I understand that
 14:46:31 **10** correctly?
 14:46:32 **11 A.** You said a lot of things there. So
 14:46:36 **12** what's the question?
 14:46:37 **13 Q.** Well, does the cash value determine --
 14:46:42 **14** if you were to do an internal exchange, does the
 14:46:46 **15** cash value determine and effect how much a
 14:46:50 **16** guaranteed policy you could purchase? In other
 14:46:54 **17** words --
 14:46:55 **18 A.** If you're asking me if more cash
 14:46:58 **19** provides more death benefit, yes. That's all I've
 14:47:04 **20** got for you.
 14:47:05 **21 Q.** So let's -- let me say it
 14:47:11 **22** hypothetically. If -- let's say -- let's say
 14:47:18 **23** \$1 million will purchase \$10 million of guaranteed
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14:47:22 **1** as a premium payment --
 14:47:23 **2 A.** Sure.
 14:47:24 **3 Q.** -- is it -- is it fair to say that a
 14:47:28 **4** \$500,000 premium payment will allow you to purchase
 14:47:36 **5** 5 million?
 14:47:38 **6 A.** If you do that -- if you were to buy
 14:47:41 **7** two policies today on the same day, it would be
 14:47:45 **8** roughly -- we're not exact, but once you paid money
 14:47:51 **9** into a policy, you have expenses and mortality cost
 14:47:55 **10** and you would have bought less insurance --
 14:47:58 **11** generally speaking -- if you were to buy a new
 14:48:11 **12** policy today -- if you spent \$1 on the policy or \$2
 14:48:18 **13** on the policy, you would expect to get twice as
 14:48:22 **14** much generally speaking if you were to purchase the
 14:48:24 **15** exact same thing on the same day. That's directly
 14:48:27 **16** in the policy.
 14:48:29 **17** What I said -- that statement you made is
 14:48:32 **18** correct, and I'm going to put \$2 into policy A and
 14:48:36 **19** \$1 into policy A and then exchange from policy A to
 14:48:39 **20** policy B, I can't make the same assertion you'd get
 14:48:43 **21** the same amount.
 14:48:43 **22 Q.** Okay. And in -- in your calculations
 14:48:50 **23** when you were -- and now I'm looking at Exhibit 27,
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14:48:55 **1** October 23rd, 2003, letter.
 14:49:04 **2 A.** Okay.
 14:49:04 **3 Q.** In the fourth paragraph to the last
 14:49:08 **4** sentence, you indicate that if you wish to do the
 14:49:15 **5** exchange that the surrender charge -- there will be
 14:49:20 **6** no surrender charges and your entire cash account
 14:49:23 **7** value will be applied to the new policy and that
 14:49:28 **8** the cash value was 1.625 million approximately and
 14:49:40 **9** it would generate a guaranteed death benefit of
 14:49:43 **10** 6.3 million, approximately; is that accurate?
 14:49:45 **11 A.** That's what I'm saying in this letter,
 14:49:47 **12** yes.
 14:49:47 **13 Q.** Okay. Now, if we look at the --
 14:49:49 **14** Exhibit 41 in the 2005 annual statement, I believe
 14:49:54 **15** it's page 3, it has a gross fund value of \$976,000,
 14:50:07 **16** approximately.
 14:50:19 **17 A.** I'm sorry.
 14:50:20 **18 Q.** It was page 3.
 14:50:21 **19 A.** I got it. I got it. You're fine.
 14:50:25 **20** I've got --
 14:50:26 **21 MR. TRACY:** What's the update number?
 14:50:31 **22 MR. MOORE:** 71.
 14:50:32 **23 THE WITNESS:** Here?
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14:50:34 **1 MR. TRACY:** Same thing.
 14:50:37 **2 THE WITNESS:** That was --
3 (Off the record: 2:51 p.m.)
 14:51:58 **4 THE WITNESS:** So I understand the question
 14:51:59 **5** correctly, you're asking me --
 14:52:00 **6 BY MR. MOORE:**
 14:52:00 **7 Q.** Let me rephrase. I'm sorry. I just
 14:52:04 **8** note the -- I intended to be working off the 2005
 14:52:08 **9** annual statement. There should have been a third
 14:52:14 **10** page, 382. It would have been the third page of
 14:52:21 **11** the annual statement.
 14:52:21 **12 A. Oh, okay.**
 14:52:21 **13 Q.** That is not here for some reason.
 14:52:24 **14 A. Okay.**
 14:52:25 **15 Q.** So now I'm going to switch to a
 14:52:28 **16** somewhat hypothetical question using 2008, okay,
 14:52:31 **17** using the form and the information provided on the
 14:52:34 **18** annual statement.
 14:52:34 **19 A. Okay.**
 14:52:34 **20 Q.** So if we look to the third page of the
 14:52:37 **21** annual statement --
 14:52:40 **22 A. And what's the page number?**
 14:52:42 **23 Q.** In fact, it's the 2009 annual
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14:52:44 **1** statement. Yeah, 071. Okay. That's the Bates.
 14:52:58 **2** So 071, 2008, and it has a gross fund value
 14:53:03 **3** of 976,000.
 14:53:07 **4** Now, for hypothetical purposes, let's say
 14:53:11 **5** the fund value was 976,000 --
 14:53:14 **6 A. Yes.**
 14:53:14 **7 Q.** -- in 2005.
8 A. Correct.
 14:53:15 **9 Q.** Okay. Now, would you be able to
 14:53:17 **10** calculate that that -- 976,000 is approximately
 14:53:22 **11** 60 percent of 1.623 million?
 14:53:28 **12 A. Approximately.**
 14:53:28 **13 Q.** Approximately. So given this gross
 14:53:32 **14** fund value, if that were converted, applied to the
 14:53:37 **15** new policy without surrender charges, would it be
 14:53:42 **16** fair to say that the guaranteed benefit would be
 14:53:44 **17** approximately 60 percent of the 6.3 million that
 14:53:49 **18** would have been anticipated originally?
 14:53:51 **19 A. Yeah. Hypothetically, on this**
 14:53:56 **20 Bates 46, if you put 60 percent of the money in for**
 14:54:00 **21 the premium, you would expect 60 percent of the**
 14:54:02 **22 guaranteed death benefit. I would agree with that,**
 14:54:04 **23 of course the hypothetical is, is this product even**
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14:54:09 **1 available, which we've already figured out it**
 14:54:13 **2 probably wasn't.**
 14:54:13 **3 Q.** Why do you say that?
 14:54:15 **4 A. Because there's a 2004 or later -- 2004**
 14:54:19 **5 or a month later in 2003 for -- in the exhibits**
 14:54:25 **6 you've given me which shows the SULLPR4, which**
 14:54:29 **7 means Lincoln has already moved on to a new**
 14:54:31 **8 product.**
 14:54:31 **9 So we've got a fair change in products**
 14:54:34 **10 annually or how often they're changing. So I don't**
 14:54:38 **11 know if this product -- at this time, that would be**
 14:54:39 **12 true, but it doesn't mean that that product was**
 14:54:42 **13 available the following year.**
 14:54:43 **14 Q.** Was there ever any discussion with the
 14:54:47 **15** client that there's a possibility that the policy
 14:54:51 **16** opportunities could be changing down the line and
 14:54:54 **17** the options that were described in your
 14:54:58 **18** October 9th, 2002, letter to Hy Polakoff might not
 14:55:02 **19** be applicable going forward in a worst case
 14:55:05 **20** scenario?
 14:55:06 **21 A. There was certainly no discussion that**
 14:55:08 **22 there was any guarantee that the products would be**
 14:55:12 **23 available. We look at the products that are there,**
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14:55:13 **1 and then we have to wait.**
 14:55:15 **2 I do recall the language in one of the**
 14:55:16 **3 letters that we went through today said, we'll**
 14:55:19 **4 check in two years and see what's available.**
 14:55:22 **5 So was it explicitly stated? No, it also**
 14:55:26 **6 wasn't explicitly stated that these would be**
 14:55:27 **7 available forever. So I don't know what they're**
 14:55:34 **8 thinking, but if we have two letters saying there's**
 14:55:39 **9 going to be a new product to look at, I think at**
 14:55:39 **10 that point the idea that products were changing is**
 14:55:40 **11 probably obvious, but I can't remember any explicit**
 14:55:44 **12 conversation saying they would be available or that**
 14:55:47 **13 I have reason to believe that they wouldn't.**
 14:55:50 **14 Q.** Now, I believe you testified earlier
 14:55:52 **15** this morning that in 2002, you presented to
 14:55:55 **16** Dr. Repicci both a non-guaranteed and a guaranteed
 14:55:59 **17** alternative and that he chose the non-guaranteed
 14:56:06 **18** alternative?
 14:56:07 **19 A. Correct.**
 14:56:08 **20 Q.** Do you have any documentation to that
 14:56:10 **21** effect?
 14:56:10 **22 A. Nothing that's -- I don't have anything**
 14:56:14 **23 for that, no.**
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14:56:15 **1 Q.** Do you have any documentation other
 14:56:18 **2** than what's been -- that we have in our possession
 14:56:20 **3** currently?
 14:56:20 **4 A.** No, we've given you everything that we
 14:56:23 **5** have.
 14:56:23 **6 Q.** Are you specifically aware of anything
 14:56:25 **7** that you provided to Dr. Repicci?
 14:56:30 **8 A.** Nothing other than perhaps the Lincoln
 14:56:43 **9** brochure. I may have sent him a brochure. I know
 14:56:49 **10** Lincoln Financial Group had a brochure around their
 14:56:50 **11** products and how they're used for this purpose, and
 14:56:52 **12** I may have sent that to him.
 14:56:54 **13 Q.** And just for the record, if it hasn't
 14:57:00 **14** been clear, when we refer to Lincoln, we're
 14:57:04 **15** referring to Lincoln Financial --
 14:57:07 **16 A.** Group.
 14:57:07 **17 Q.** -- Group.
 14:57:14 **18** Okay. I don't think there was any confusion
 14:57:17 **19** about that.
 14:57:17 **20 A.** Not Abraham Lincoln. He was never
 14:57:17 **21** involved.
 14:57:17 **22 Q.** Now, I believe you indicated that
 14:57:21 **23** Dr. Repicci chose the non-guaranteed for tax
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14:57:25 **1** purposes?
 14:57:26 **2 A.** Correct.
 14:57:26 **3 Q.** Can you give more detail about what
 14:57:30 **4** that would be?
 14:57:30 **5 A.** The main motivation for this
 14:57:34 **6** transaction was to remove dollars from John's
 14:57:40 **7** retirement plan and not have to pay income tax on
 14:57:43 **8** the withdrawals, on all of the value.
 14:57:47 **9** So by spending \$3 million on premiums, he
 14:57:50 **10** could remove those values and only pay taxes on
 14:57:54 **11** 1.1. So John's plan was to save income taxes in
 14:57:56 **12** New York, 50 percent of about \$950,000, which he
 14:58:01 **13** successfully did.
 14:58:02 **14** So the primary purpose was to, how do I buy
 14:58:06 **15** something in my plan that I can reduce -- I can get
 14:58:09 **16** out of the plan and pay less tax and then
 14:58:12 **17** subsequently add value to my family?
 14:58:15 **18 Q.** What was the difference with the
 14:58:17 **19** guaranteed product?
 14:58:17 **20 A.** I don't remember what the difference
 14:58:19 **21** was other than there wasn't as much compression.
 14:58:23 **22** This was the product that worked best to reduce the
 14:58:26 **23** taxes by 60 percent.
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14:58:30 **1 Q.** Now, I may well have this incorrect,
 14:59:04 **2** but -- or not clear, anyway, can you give me any
 14:59:07 **3** more explanation -- you testified previously, and I
 14:59:11 **4** believe we were talking about the internal exchange
 14:59:14 **5** to a guaranteed product somewhere in the 2004-2005
 14:59:18 **6** range, and I believe you indicated that the
 14:59:23 **7** guaranteed product wouldn't work with the tax
 14:59:26 **8** structure at the time?
 14:59:28 **9 A.** Not the -- I don't believe I said
 14:59:31 **10** anything about the tax structure in 2004 or '05.
 14:59:34 **11 Q.** And I'm probably misconstruing that.
 14:59:43 **12** Were you talking about the 2002 product as -- for
 14:59:48 **13** tax purposes having a higher cash surrender value
 14:59:52 **14** and that's why it was less attractive than the
 14:59:56 **15** non-guaranteed policy?
 14:59:56 **16 A.** Yes, correct.
 14:59:57 **17 Q.** And I think you testified early in this
 15:00:01 **18** deposition that as a general rule, guaranteed
 15:00:04 **19** products had a much lower cash surrender value and,
 15:00:08 **20** hence, one of the reasons why sometimes someone
 15:00:13 **21** might not want a guaranteed policy?
 15:00:16 **22 A.** I think --
 15:00:16 **23 MR. TRACY:** Objection, but you can answer.
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15:00:18 **1 THE WITNESS:** Yeah. I'm not sure what I
 15:00:21 **2** said exactly earlier, I'm sure it's in the record.
 15:00:24 **3** Over the long haul, the guaranteed products
 15:00:28 **4** typically don't have as much cash available because
 15:00:32 **5** they don't have as much cash -- they don't have as
 15:00:34 **6** much long-term cash accumulation because they take
 15:00:36 **7** more money out, generally speaking, over the life
 15:00:39 **8** of a policy, that's true.
 15:00:40 **9** In this particular situation in the early
 15:00:42 **10** years, this product just happened to work well. So
 15:00:46 **11** I don't know if it's a universal statement of one
 15:00:48 **12** is always better than the other, but --
 15:00:50 **13 BY MR. MOORE:**
 15:00:51 **14 Q.** Okay. I'm sorry. I didn't mean to --
 15:00:52 **15 A.** So I don't -- it's not a universal
 15:00:55 **16** statement, one is always better. People who want
 15:00:58 **17** secondary guarantees from the insurer often give up
 15:01:03 **18** access to cash. That is true in general, but for
 15:01:06 **19** this specific product for this purpose, it's an
 15:01:09 **20** unusual product that has such a low value. It's
 15:01:13 **21** just not typical. Not very many policies have this
 15:01:17 **22** type of compression opportunity.
 15:01:18 **23 Q.** And do we have any backup documentation
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15:01:21 **1** of that?

15:01:22 **2 A. Of?**

15:01:22 **3 Q. Of --**

15:01:24 **4 A. The fact that these are unusual?**

15:01:26 **5 Q. The backup of the compression component**

15:01:29 **6 of this compared to, let's say, the MassMutual**

15:01:32 **7 policy that was purchased.**

15:01:35 **8 A. What type of backup would you like?**

15:01:42 **9 Q. Well, what would you have run -- what**

15:01:46 **10 did you provide to Dr. Repicci to make this**

15:01:48 **11 argument that this, the non-guaranteed policy, was**

15:01:52 **12 better than the guaranteed policy?**

15:01:55 **13 A. So earlier you asked me where could we**

15:01:59 **14 get these policy illustrations. Did we shop**

15:02:01 **15 around? Did we ask other people? And I mentioned**

15:02:03 **16 we talked to Visys, V-I-S-Y-S, we talked to**

15:02:08 **17 Millennium Brokerage Group, we talked to a couple**

15:02:10 **18 of different groups and said, show us policies**

15:02:12 **19 that'll work, and the ones that came back were this**

15:02:14 **20 Lincoln product and this MassMutual product.**

15:02:17 **21 John obviously loved one, and then the**

15:02:19 **22 conversation with them is, what works with**

15:02:20 **23 guarantees? And everybody comes back and says,**

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15:02:24 **1 nothing. We've got nothing that can give you the**

15:02:27 **2 guarantee that will give you compression like this.**

15:02:29 **3 So I don't have the -- I obviously would**

15:02:32 **4 have looked for it. I didn't work for Lincoln, I**

15:02:37 **5 didn't care whether we used Lincoln. That was the**

15:02:38 **6 best product from a tax standpoint.**

15:02:38 **7 Q. And would you have any copies of**

15:02:40 **8 documentation that you just described with the --**

15:02:42 **9 A. A -- I have no conversation -- I have**

15:02:46 **10 no records from 2002 with Visys or Paul Panzer or**

15:02:50 **11 John White, Millennium. I don't have any of those.**

15:02:53 **12 No, I wouldn't have any of that.**

15:02:59 **13 Q. Now, for tax purposes, you indicated**

15:03:05 **14 previously that -- and I believe you said after**

15:03:09 **15 three years, the tax implications are complete and**

15:03:13 **16 at that point going forward, you are interested**

15:03:15 **17 only in the insurance aspect of it.**

15:03:17 **18 And I'm trying to understand whether -- if**

15:03:23 **19 that -- year three was important or was year two**

15:03:27 **20 the critical period for tax purposes, if you have**

15:03:30 **21 any recollection of that.**

15:03:34 **22 A. The period of time that would matter**

15:03:36 **23 for this is -- originally, it was three years of**

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15:03:39 **1 premium payments, fourth year take the policy out,**

15:03:43 **2 file a tax return in year five, and then move on**

15:03:46 **3 from there.**

15:03:46 **4 The law changed so you pay two premiums,**

15:03:50 **5 review the policy either in year two or three, file**

15:03:53 **6 a tax return in three or four, and then you could**

15:03:55 **7 start looking at everything. So, in this case, it**

15:03:57 **8 was -- it moved up a year faster.**

15:04:00 **9 Q. Okay. So it went down to two years?**

15:04:02 **10 A. Two years of funding, but you still**

15:04:04 **11 have to withdraw the policies, and I can't remember**

15:04:06 **12 when that was done.**

15:04:06 **13 Q. All right. And so that would explain**

15:04:08 **14 why in Exhibit 26 you made the point you can pay by**

15:04:12 **15 month 25?**

15:04:14 **16 A. You could remove it in month 25.**

15:04:16 **17 Q. Right. Okay. That makes sense now.**

15:04:23 **18 On Exhibit 29, which was the exhibit about the**

15:04:29 **19 charge backs, we don't need to look at it --**

15:04:31 **20 A. Okay.**

15:04:31 **21 Q. -- it was in relation to the issues**

15:04:33 **22 with the 144 policy.**

15:04:34 **23 A. The 2016 -- 2014 e-mail exchange with**

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15:04:43 **1 Lindsey Ober.**

15:04:48 **2 Q. That policy was purchased in 2006,**

15:04:56 **3 eight years earlier. Why was the issue of charge**

15:05:00 **4 backs even raised?**

15:05:01 **5 A. I had just received a charge back the**

15:05:05 **6 week before for some other policy, and I never had**

15:05:09 **7 a charge back in my career, and somebody changed**

15:05:12 **8 the policy, surrendered something and all of a**

15:05:15 **9 sudden I got a statement that was, hey, by the way,**

15:05:18 **10 Merry Christmas, you owe us \$25,000, or something**

15:05:20 **11 along those lines.**

15:05:20 **12 Q. And how long was it after the policy**

15:05:22 **13 had been purchased that --**

15:05:23 **14 A. I don't remember.**

15:05:23 **15 Q. Because you had testified earlier that**

15:05:26 **16 typically charge backs happened within year one?**

15:05:29 **17 A. Within year one, and I think that**

15:05:30 **18 policy -- it was something uncharacteristically**

15:05:35 **19 long that I had never seen before, so I said, oh,**

15:05:36 **20 is there something in here I need to know about for**

15:05:36 **21 informational purposes?**

15:05:42 **22 Q. Were you concerned at any time that if**

15:05:44 **23 you did an internal exchange with the Lincoln**

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15:05:47 **1** policy, 026 policy, that you might be subject to a
 15:05:51 **2** charge back?
 15:05:51 **3** **A. No, quite the contrary. I thought I --**
 15:05:53 **4 they told me they would apply full surrender --**
 15:06:00 **5 full cash value and pay me again. So I had the**
 15:06:03 **6 other alternative was, wow, I'm actually going to**
 15:06:04 **7 make money again to do this.**
 15:06:05 **8 Q.** Let me -- let me move to Exhibit 8
 15:06:18 **9** again.
 15:06:34 **10 A. The big policy?**
 15:06:35 **11 Q.** That's the 026. Yeah, Lincoln 026. I
 15:06:49 **12** may have pulled the wrong exhibit. Just a minute.
 15:07:08 **13** No, I didn't.
 15:07:10 **14** If we look at Bates Page Number 1641, which
 15:07:16 **15** is the initial page, so we have 25 million
 15:07:21 **16** insurance issued, correct?
 15:07:23 **17 A. Correct.**
 15:07:23 **18 Q.** If you turn to 1643, in the middle of
 15:07:31 **19** the page, it says there's a minimum premium --
 15:07:35 **20 A. Yes.**
 15:07:35 **21 Q.** -- \$7,079 and some cents. Now, do I
 15:07:43 **22** understand that correctly to mean that in order to
 15:07:46 **23** maintain the guaranteed portion of that -- well,
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15:07:54 **1** before I ask that question, let me move on to
 15:07:57 **2** another page here.
 15:07:58 **3** Now, we'll stick with that.
 15:08:14 **4** Okay. Page 1643, it says, minimum payment,
 15:08:18 **5** \$7,079.70 is the minimum amount due on or before
 15:08:23 **6** each monthly anniversary date during the first
 15:08:24 **7** three policy years.
 15:08:25 **8** So am I correct to understand that if you
 15:08:30 **9** pay that amount monthly for the first three years,
 15:08:34 **10** that the full face value of that policy would
 15:08:37 **11** remain in effect?
 15:08:37 **12 A. Only for three years.**
 15:08:39 **13 Q.** Only for three years, correct, yes.
 15:08:43 **14** And my math, quick calculation shows that 7,079.70
 15:08:50 **15** for 12 months a year times three years is \$254,869,
 15:08:59 **16** if I can read my own writing, but approximately
 15:09:02 **17** that number.
 15:09:02 **18 A. I'll take your word for it.**
 15:09:03 **19 Q.** Okay. So when it had been possible --
 15:09:09 **20** because I understand you wanted a high face value
 15:09:12 **21** on the Lincoln initially. You had X amount of
 15:09:17 **22** dollars that you needed to move out of the IRA
 15:09:19 **23** within three years.
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15:09:21 **1** Could you not have purchased the 026 policy
 15:09:28 **2** and paid on a monthly basis for three years with an
 15:09:33 **3** ultimate total of \$254,000?
 15:09:38 **4** At the point when you're doing the reduction
 15:09:41 **5** in values, move the remainder of the 1.2 million
 15:09:48 **6** that would have been set aside to be paid on the
 15:09:52 **7** 026 policy, couldn't those funds have been moved
 15:09:55 **8** into MassMutual policy at the same time as you're
 15:09:58 **9** doing the reduction in value of that policy?
 15:10:02 **10** And let me -- before you answer that, I'll
 15:10:06 **11** ask another question that might make it clearer.
 15:10:09 **12** With regard to the MassMutual policy, when
 15:10:14 **13** you reduce the face value, you could not -- you
 15:10:18 **14** said they would not exceed 17.5 million. That's as
 15:10:22 **15** high as they would go.
 15:10:23 **16 A. Correct.**
 15:10:24 **17 Q.** They're willing to ensure any level
 15:10:27 **18** there or below, correct?
 15:10:28 **19 A. That's correct.**
 15:10:28 **20 Q.** So you could have paid more premium at
 15:10:31 **21** some point?
 15:10:31 **22 A. Into the Mass policy.**
 15:10:32 **23 Q.** Into the Mass policy. And gotten a
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15:10:34 **1** higher value on the --
 15:10:36 **2 A. Yes.**
 15:10:36 **3 Q.** -- on the -- on the insurance value of
 15:10:39 **4** it?
 15:10:40 **5 A. Could John have made gifts to his kids**
 15:10:47 **6 of after-tax dollars subject to gift taxes and then**
 15:10:52 **7 had them pay future premiums to keep that death**
 15:10:55 **8 benefit higher? The answer is yes.**
 15:10:56 **9 Q.** Well, the question is, he had money in
 15:10:59 **10** the IRA and we know there was 1.2 million spent
 15:11:04 **11** from that into the 026 policy?
 15:11:05 **12 A. Yes.**
 15:11:05 **13 Q.** Could 254,000 have been spent from the
 15:11:11 **14** IRA to maintain the 026 policy, which would leave
 15:11:14 **15** you approximately, what, \$955,000, something like
 15:11:20 **16** that, that could have been added to the MassMutual
 15:11:24 **17** policy at the point you reduced the face value on
 15:11:28 **18** that policy, so that instead of reducing it down to
 15:11:33 **19** four, you probably would have reduced it down to
 15:11:36 **20** about seven, if you had been able to pay the
 15:11:39 **21** additional premium at that time? Wasn't that a
 15:11:42 **22** possibility?
 15:11:43 **23 A. Terrible possibility.**
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15:11:46 **1 Q. Why?**
 15:11:46 **2 A. Well, if you don't plan to put the**
 15:11:50 **3 money into Lincoln policy, why waste the 254?**
 15:11:54 **4 He couldn't put any more cash into the**
 15:11:58 **5 policy inside of the retirement plan with pre-tax**
 15:12:01 **6 dollars that wasn't available.**
 15:12:04 **7 He couldn't go beyond the number he paid.**
 15:12:04 **8 He max funded with the retirement plan, he couldn't**
 15:12:06 **9 put any more money in, and the tax change**
10 necessitated us moving it out.
 15:12:10 **11 So if John wanted to pay \$900,000, he could**
 15:12:14 **12 have. It's not what you suggested, but he would**
 15:12:16 **13 have had to distribute the 900,000 out of his**
 15:12:23 **14 retirement plan, he would have been required to pay**
 15:12:29 **15 450,000 in taxes, he would have gifted the net 450**
 15:12:33 **16 to a trust for his kid, which is the new owner of**
 15:12:36 **17 the Mass policy, and subjected himself at the time**
 15:12:39 **18 to a 50 percent estate tax, which would have**
 15:12:42 **19 been -- let him put \$225,000 into the Mass policy,**
 15:12:48 **20 which may have increased the death benefit 200 over**
 15:12:54 **21 1.216. So it may have increased that policy by**
 15:13:01 **22 \$600,000.**
 15:13:01 **23 So if he had done that, he would have had a**
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15:13:04 **1 way underfunded Lincoln product and he would have**
 15:13:08 **2 had 4.6 million and then he would have really been**
 15:13:12 **3 in a terrible spot.**
 15:13:13 **4 Q. Explain to me again why he couldn't put**
 15:13:17 **5 more of the pre-tax dollars from the IRA into the**
 15:13:21 **6 MassMutual policy --**
7 A. So --
 15:13:22 **8 Q. -- to the point when -- you know, at**
 15:13:23 **9 that later time?**
 15:13:23 **10 A. So in the previously aforementioned**
 15:13:32 **11 exhibit with Lindsey Ober and I had asked her to**
 15:13:36 **12 reduce the face of the other policy, the challenge**
 15:13:40 **13 you have are the DEFRA and TEFRA limitations is**
 15:13:48 **14 there's only so much premium you can put into a**
 15:13:51 **15 policy relative to death benefits, and John maxed**
 15:13:53 **16 it.**
 15:13:53 **17 So I couldn't put any more -- it wouldn't**
 15:13:56 **18 take any more premium. I can't put 15 million in**
 15:13:59 **19 premium in a \$17 million policy. There's limits of**
 15:14:04 **20 how much they'll take, and so he couldn't put more,**
 15:14:06 **21 and we are stuck having to take money out of the**
 15:14:09 **22 plan because of the timing, so we were stuck.**
 15:14:10 **23 We could have kept going with annual**
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15:14:13 **1 premiums, but the longer we wait, we run the risk**
 15:14:16 **2 of running out of the opportunity for compression.**
 15:14:18 **3 So we couldn't do that and if -- if he did put the**
 15:14:25 **4 money -- if you did max out the policy at Lincoln**
 15:14:28 **5 and pulled it out and then wanted to do an**
 15:14:30 **6 exchange, you can only exchange the cash surrender**
 15:14:34 **7 value of that, you can't exchange the cash account**
 15:14:36 **8 value.**
 15:14:36 **9 So that becomes a challenge that we don't**
 15:14:40 **10 have that money, and the letter that we talked**
 15:14:45 **11 about earlier that we don't have the second page,**
 15:14:48 **12 we're talking -- it looks like I'm about to say,**
 15:14:51 **13 what are you going to do with the money in the IRA**
 15:14:53 **14 you don't need? And it's going to be take it out,**
 15:14:56 **15 pay the tax, pay the gift, fund the policy.**
 15:14:58 **16 Obviously that didn't happen.**
 15:15:00 **17 So back to your original question, no, that**
 15:15:03 **18 idea of funding more than that wasn't possible. We**
 15:15:07 **19 could not put more in.**
 15:15:09 **20 Q. At any point?**
 15:15:09 **21 A. No, in the first two years you**
 15:15:11 **22 couldn't. From the retirement plan we had no**
 15:15:13 **23 opportunity to put more in. We maxed what we**
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15:15:16 **1 could.**
 15:15:16 **2 Q. Okay. Do you have any documentation**
 15:16:58 **3 where -- that supports the position that you could**
 15:17:03 **4 not make the internal exchange within Lincoln**
 15:17:08 **5 without waiting 24 months?**
 15:17:10 **6 A. In the exhibits actually. It was**
 15:17:18 **7 something from Lincoln. It's not this one. I**
 15:17:35 **8 think in the earlier exhibit there was something**
 15:17:39 **9 that I sent John a letter from Lincoln that said**
 15:17:42 **10 you could make internal exchanges without surrender**
 15:17:45 **11 charges within two years but that -- wasn't that in**
 15:17:48 **12 the earlier exhibits?**
 15:18:21 **13 Q. I'm showing you -- this is Exhibit 27**
 15:18:25 **14 we looked at previously, and looking at Bates**
 15:18:30 **15 number 043.**
 15:18:33 **16 A. Yes.**
 15:18:33 **17 Q. And this appears to be a letter from**
 15:18:35 **18 Lincoln to Dr. Repicci, and in the first paragraph**
 15:18:40 **19 it says it allows -- current rules for internal**
 15:18:44 **20 exchanges to another Lincoln Life policy allow for**
 15:18:49 **21 waiving surrender charges of the existing contract**
 15:18:52 **22 at the time of the internal exchange.**
 15:18:57 **23 So these are the current Lincoln Life rules**
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15:19:00 **1** and they're subject to change, but it doesn't say
 15:19:04 **2** anything about a 24-month limitation.
 15:19:08 **3 A. In this letter it doesn't. I believe**
 15:19:10 **4 there's another letter that -- where it does**
 15:19:13 **5 reference this.**
 15:19:15 **6 Q.** Let's see if we can find it for
 15:19:18 **7** clarification purposes.
 15:20:44 **8** And, again, I'm looking at Exhibit 27, Bates
 15:20:50 **9** page 142, which is the letter from you to John, and
 15:20:55 **10** in the third paragraph it states --
 15:20:58 **11 MR. TRACY:** Let me get it. That's where I
 15:21:01 **12** think we're all --
 15:21:01 **13 THE WITNESS:** Yep.
 15:21:02 **14 MR. MOORE:** Okay.
 15:21:03 **15 MR. TRACY:** October 23?
 15:21:06 **16 MR. MOORE:** Yes.
 15:21:08 **17 BY MR. MOORE:**
 15:21:09 **18 Q.** And you note in that letter that
 15:21:11 **19** without any partial surrender charges after holding
 15:21:14 **20** the policy for 24 months, and you append this
 15:21:20 **21** December 2nd of '02 letter from Lincoln to
 15:21:21 **22** Dr. Repicci, but in the December 2nd letter, I'm
 15:21:27 **23** looking at page 043 right now --

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15:21:29 **1 A. Correct, I'm with you.**
 15:21:30 **2 Q.** -- there's no reference to a 24-month
 15:21:38 **3** limit.
 15:21:43 **4 A. Right. Yeah, so that -- I mean, it's**
 15:21:46 **5 also referenced in 26. 26 and 27 I've made the**
 15:21:53 **6 same statement, and my -- my recollection is that**
 15:21:58 **7 was the conversation with Kaye who then wanted to**
 15:22:02 **8 put it in writing and then did not put that point**
 15:22:04 **9 in there, just that these are our current rules.**
 15:22:08 **10 So I believe that was the rule, she just didn't**
 15:22:11 **11 mention 24 months in the letter.**
 15:22:12 **12 Q.** Okay. So it's --
 15:22:13 **13 A. I don't have --**
 15:22:14 **14 Q.** Okay. So you're not aware of any
 15:22:17 **15** written documentation of that point currently?
 15:22:20 **16 A. No --**
 15:22:21 **17 Q.** Okay.
 15:22:22 **18 A. -- I'm not.**
 15:22:24 **19 Q.** Now, looking at Exhibit 25, which is
 15:23:41 **20** the November 12th, 2002, letter from you to
 15:23:49 **21** Mr. Repicci, this is the first time, at least in
 15:23:54 **22** writing, where we see a document that talks about
 15:23:57 **23** how to guarantee a death penalty -- death benefit

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15:24:05 **1** with Lincoln and talking about a guaranteed policy.
 15:24:08 **2** Now, this letter comes after you've already
 15:24:12 **3** even made application for the non-guaranteed
 15:24:18 **4** policy. You had indicated previously that you had
 15:24:23 **5** presented both a guaranteed and a non-guaranteed
 15:24:27 **6** option to Dr. Repicci before application; does this
 15:24:33 **7** change your recollection on that at all?
 15:24:34 **8 A. We had looked at both, that much I know**
 15:24:39 **9 to be true that we had looked at both, and whether**
 15:24:42 **10 he saw an illustration or not, I can't remember,**
 15:24:46 **11 but certainly -- I'm quite confident given all the**
 15:24:55 **12 dialog we had in writing and the phone**
 15:24:58 **13 conversations included, hey, why can't we get a**
 15:25:00 **14 product like this, I like this one, and they just**
 15:25:04 **15 didn't have it.**
 15:25:05 **16 Q.** Is there any reason why a guaranteed
 15:25:08 **17** policy should not have been put in place --
 15:25:11 **18 A. Yes.**
 15:25:11 **19 Q.** -- two to three years after?
 15:25:14 **20 A. Yeah, I'm glad you showed me 25 because**
 15:25:17 **21 this essentially makes the point. So in 25, if you**
 15:25:20 **22 look at Bates 027 and you look at the difference**
 15:25:25 **23 between current basis fund, which is circled, and**

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15:25:29 **1 current basis surrender, you're going to see in the**
 15:25:31 **2 second year, if you pay the million 59, 1,059,000,**
 15:25:38 **3 you have a surrender value of 118, which is a very**
 15:25:42 **4 substantial 90 percent compression between cash**
 15:25:46 **5 value and surrender value.**
 15:25:46 **6 The product that I'm illustrating that John**
 15:25:49 **7 is going to exchange into is the SULLPR2. So we**
 15:25:54 **8 previously looked at LPR2, LPR3, LPR4, they appear**
 15:25:59 **9 to change every year, that this guaranteed cash**
 15:26:03 **10 value is 1.5 and the second year is 1 point -- I**
 15:26:08 **11 can't read that -- 672.**
 15:26:10 **12 Q.** What page --
 15:26:10 **13 A. I'm sorry. 028. So on 028, if we go**
 15:26:14 **14 to the second year, previously we had a 90 percent**
 15:26:18 **15 compression, this goes from 16 -- 1.6 something to**
 15:26:23 **16 1.35. We're talking about a very, very modest**
 15:26:28 **17 15 percent, not even -- you know, maybe a**
 15:26:31 **18 20 percent compression.**
 15:26:33 **19 So this product here, he could buy it, but**
 15:26:36 **20 he spent taxes on all of it that comes out. So**
 15:26:41 **21 just in showing him this, if this is the apples to**
 15:26:44 **22 apples comparison, sure, the guaranteed, but you're**
 15:26:47 **23 going to pay taxes on 20 percent, not 90 percent.**

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15:26:50 **1 Q.** In that letter, your cover letter, you
 15:26:53 **2** state, I think this is a very desirable solution
 15:26:55 **3** for you. Why?
 15:26:57 **4 A.** Well, the idea that having your cake
 15:27:00 **5** and eating it, too, that if you make this change,
 15:27:03 **6** make -- buy the policy you have, you're going to
 15:27:05 **7** buy, you get the 60 to 90 percent compression for
 15:27:09 **8** taxes, then you later do an exchange, if this is
 15:27:15 **9** available, I didn't know it would be available,
 15:27:18 **10** then you get to have a guaranteed product on the
 15:27:21 **11** other side of the low taxes. So the desirable
 15:27:24 **12** position is to have both.
 15:27:25 **13 Q.** And you say of course we wouldn't have
 15:27:28 **14** to decide about the conversion for another two to
 15:27:30 **15** three years?
 15:27:31 **16 A.** Right.
 15:27:32 **17 Q.** And after the two to three-year period,
 15:27:33 **18** the tax issue would no longer be an issue, correct?
 15:27:36 **19 A.** Correct.
 15:27:37 **20 Q.** Would it have been in the client's best
 15:27:40 **21** interest regardless of how it was done or
 15:27:43 **22** implemented to have been moved into a guaranteed
 15:27:48 **23** product at the end of two or three years?

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15:27:51 **1 MR. TRACY:** Objection.
 15:27:52 **2 THE WITNESS:** Now that I've looked at this
 15:27:56 **3** and I see in less than a two-year period Lincoln's
 15:28:02 **4** run through three products, SULLPR2, SULLPR3,
 15:28:04 **5** SULLPR4, they're changing products every nine
 15:28:08 **6** months, that if one of these products had been
 15:28:10 **7** available at that time, that may have been a good
 15:28:13 **8** move for them. I don't know if these products were
 15:28:16 **9** available.
 15:28:16 **10 BY MR. MOORE:**
 15:28:25 **11 Q.** Did you make an investigation at the
 15:28:27 **12** end of two or three years about the availability of
 15:28:30 **13** the products?
 15:28:31 **14 A.** I believe I -- I believe I probably
 15:28:34 **15** did. I have no documentation to that, so I
 15:28:38 **16** don't -- my guess is he looked at it and the new
 15:28:42 **17** products just weren't as good. That's my -- that's
 15:28:44 **18** a guess. I don't have any documentation to state
 15:28:47 **19** that I did or I didn't.
 15:28:49 **20 Q.** Do you recall the exhibit -- do you
 15:28:59 **21** recall Dr. Repicci's first communication to you in
 15:29:01 **22** 2014 whereby he raised his -- I don't mean to
 15:29:08 **23** unfairly characterize, but his dismay with the

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15:29:12 **1** performance --
 15:29:12 **2 MR. TRACY:** IRS and everything else.
 15:29:19 **3 BY MR. MOORE:**
 15:29:20 **4 Q.** Right. And in any event, were you
 15:29:24 **5** surprised that Dr. Repicci felt that his policies
 15:29:29 **6** should be guaranteed or at least not lapse before
 15:29:34 **7** age 100?
 15:29:35 **8 MR. TRACY:** Objection.
 15:29:36 **9 THE WITNESS:** I think you asked two
 15:29:41 **10** questions in there.
 15:29:42 **11 MR. MOORE:** I did.
 15:29:42 **12 MR. TRACY:** Note my objection.
 15:29:42 **13 THE WITNESS:** Could you do one question at a
 15:29:42 **14** time and I'll answer --
 15:29:50 **15 MR. MOORE:** We'll do one question at a time.
 15:29:52 **16 BY MR. MOORE:**
 15:29:54 **17 Q.** Were you surprised that Dr. Repicci
 15:29:56 **18** indicated that he had understood that he had
 15:29:59 **19** guaranteed policies?
 15:30:01 **20 A.** I was very surprised that he thought he
 15:30:04 **21** had guaranteed policies.
 15:30:05 **22 Q.** In your view, were his policies in good
 15:30:10 **23** financial shape at that point?

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15:30:11 **1 A.** Describe good financial shape.
 15:30:15 **2 Q.** Well, I'll use the characteristics you
 15:30:17 **3** used in your October 9th, 2002, letter to Hy
 15:30:21 **4** Polakoff.
 15:30:21 **5 A.** All right.
 15:30:21 **6 Q.** If you want to pull out that
 15:30:25 **7** description, basically the -- it was a poor
 15:30:32 **8** performance. Had you seen poor performance in any
 15:30:35 **9** way of the policies prior to 2014?
 15:30:37 **10 A.** Yes. Well, not -- it wouldn't be poor
 15:30:42 **11** performing, I would say lower than originally
 15:30:45 **12** illustrated.
 15:30:46 **13 So I was not -- in 2014, I was not surprised**
 15:30:50 **14 that in a low interest rate environment, he wasn't**
 15:30:55 **15 getting the return he thought he was going to get.**
 15:30:57 **16 That didn't surprise me at all.**
 15:31:01 **17 We had looked at options and couldn't find**
 15:31:04 **18 things that were -- we had talked about putting**
 15:31:07 **19 more premium in and he hadn't done that, so I**
 15:31:11 **20 wasn't surprised that it wasn't illustrating to**
 15:31:15 **21 100, but we had conversations about that fact that**
 15:31:17 **22 these policies are current assumptions, we don't**
 15:31:18 **23 have guaranteed products, they're getting more**

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15:31:19 **1 expensive.**
 15:31:21 **2 This is a situation where we're going to**
 15:31:24 **3 spend a lot of money or are we comfortable without**
 15:31:26 **4 the guarantee. So the tone surprised me and the**
 15:31:29 **5 idea that -- are these term or permanent completely**
 15:31:32 **6 surprised me because we had had a lot of**
 15:31:34 **7 conversations about this.**
 15:31:34 **8 Q.** You indicated previously you thought
 15:31:36 **9** Dr. Repicci was one of your smartest clients?
 15:31:39 **10 A. Yes.**
 15:31:39 **11 Q.** And do you think Dr. Repicci would make
 15:31:43 **12** a claim like that with -- without an understanding
 15:31:47 **13** of the situation?
 15:31:51 **14 MR. TRACY:** Objection.
 15:31:54 **15 THE WITNESS:** I got the letter and had a
 15:32:00 **16** conversation with John and said, hey, I'm trying to
 15:32:04 **17** help you, where are we? And he said, Chris, you've
 15:32:07 **18** been great to us, I love the work you do, we're
 15:32:10 **19** just trying to get this thing fixed at the
 15:32:13 **20** insurance company level, I'm not interested in
 15:32:15 **21** suing you, we're just trying to get the insurance
 15:32:17 **22** company to move and do something we want them to
 15:32:21 **23** do.

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15:32:21 **1** Okay. I appreciate you not suing me in the
 15:32:23 **2** process, but fit yourself however you can, and that
 15:32:26 **3** was the situation. It seemed like he was being
 15:32:29 **4** coached to put something in writing, but our
 15:32:32 **5** conversation seemed very different where he wasn't
 15:32:34 **6** angry, he wasn't disappointed, he was just matter
 15:32:38 **7** of fact, let's just get these things to guarantees.
 15:32:41 **8** I'll keep trying.
 15:32:42 **9 BY MR. MOORE:**
 15:32:43 **10 Q.** And based on your letter of
 15:32:45 **11** October 9th, 2002, to Hy Polakoff, wouldn't it be
 15:32:48 **12** his expectation that if -- if there were problems
 15:32:52 **13** down the road financially that there could be steps
 15:32:57 **14** taken to preserve the policies? Is that not a
 15:33:02 **15** reasonable assumption on his part?
 15:33:02 **16 A. Sure, and we tried numerous times.**
 15:33:05 **17 Q.** Is there any documentation of those
 15:33:08 **18** numerous times other than what we've seen here
 15:33:11 **19** today?
 15:33:11 **20 A. Not that -- we've produced everything**
 15:33:14 **21 so you should have everything.**
 15:33:15 **22 Q.** All right. I'm going to change focus
 15:33:21 **23** here just a little bit, and we're going to go to

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15:33:24 **1** the 144 policy, the second Lincoln policy.
 15:33:27 **2 A. Okay.**
 15:33:28 **3 Q.** Now, my understanding is you testified
 15:33:31 **4** you really had no involvement in that whatsoever?
 15:33:35 **5 A. Correct.**
 15:33:35 **6 Q.** So -- and so I'm just going to get a
 15:33:40 **7** little clarification on a few things first.
 15:33:42 **8 A. I had no involvement in the sale of it,**
 15:33:45 **9 I had involvement in servicing it later after 2011,**
 15:33:50 **10 I believe.**
 15:33:50 **11 Q.** Correct. I think that's what you
 15:33:52 **12** indicated.
 15:33:53 **13** Okay. Please look at Exhibit 19 again.
 15:35:36 **14 A. Sure.**
 15:35:37 **15 Q.** Now, I think you had testified
 15:35:51 **16** previously as to this letter that it was in fact
 15:35:57 **17** with regard to the 144 policy. So my question
 15:36:03 **18** simply is, why is the letter coming from you?
 15:36:06 **19 A. Because -- why is the letter coming**
 15:36:08 **20 from me? These policies are not -- these plans pay**
 15:36:15 **21 one year -- they pay five years, I think he paid**
 15:36:17 **22 one, and now this doesn't look so great, and Celia**
 15:36:22 **23 Clark, Dave Mandell said to me, I need help**

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15:36:26 **1 figuring out what to do with this, I don't know**
 15:36:26 **2 what to do with this. Sure, okay. Let's see if I**
 15:36:29 **3 can help.**
 15:36:30 **4 Q.** So you were approached by Celia Clark
 15:36:33 **5** and Dave Mandell to see if you could help on this
 15:36:35 **6** one?
 15:36:36 **7 A. Yes.**
 15:36:36 **8 Q.** Okay. Were you ever listed as the
 15:36:40 **9** representative agent on the 144 policy?
 15:36:43 **10 A. Subsequently to servicing it at some**
 15:36:46 **11 point, I think I was. It might have been in '11.**
 15:36:48 **12 I don't know when I took over to do that.**
 15:36:50 **13 Q.** We definitely have that document and
 15:36:53 **14** can -- we can view it later, but ...
 15:37:29 **15** Okay. This is Plaintiff's Exhibit
 15:37:54 **16** Number 43. These appear to be communications
 15:37:57 **17** between you and Celia Clark with Hy Polakoff
 15:38:06 **18** copied, and I'm looking at the second page of that.
 15:38:12 **19** They were produced as exhibits, I believe, at Hy
 15:38:25 **20** Polakoff's deposition.
 15:38:27 **21** And the -- I'm really interested in the last
 15:38:36 **22** paragraph on page 2 where you state, why do I
 15:38:41 **23** always have to clean up other people's poor client

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15:38:45 **1** service?

15:38:45 **2** Can you tell me what was going on with this

15:38:48 **3** policy, to the extent you knew?

15:38:50 **4** **A. Well, the fact that there -- it's 2012,**

15:38:57 **5 they had Dave Mandell as the original agent, plus**

15:39:02 **6 the policy was funded with premium financing and**

15:39:06 **7 EBI, and so they worked together, they split the**

15:39:29 **8 case, they got the commission.**

15:39:29 **9 I stopped working with Dave Mandell in 2009,**

15:39:33 **10 and here I am three years later realizing the**

15:39:38 **11 clients haven't had any service on this case and**

15:39:41 **12 the policy is not performing well, and I'm just**

15:39:46 **13 commiserating with Celia that I get to clean up**

15:39:50 **14 somebody else's mess. That's it.**

15:39:52 **15 Q. All right. Look at what's been marked**

15:39:59 **16 as Exhibit 45.**

15:40:02 **17 A. Okay.**

15:40:02 **18 Q. And do you recognize this document?**

15:40:05 **19 A. Looks like e-mails between Celia's --**

15:40:19 **20 Christine Edwards is the assistant to Celia Clark.**

15:40:28 **21 Yep.**

15:40:28 **22 Q. And do you have a recollection of these**

15:40:31 **23 correspondence?**

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15:40:31 **1 A. Sure.**

15:40:32 **2 Q. Okay. Let me ask you, the response**

15:40:40 **3 from you -- the top of the page on Exhibit 45,**

15:40:45 **4 first page, you note that Dave Wright was the**

15:40:50 **5 original and then state -- and I believe you mean**

15:40:52 **6 representative at that point; is that correct?**

15:40:56 **7 A. They said it's an orphan. So Dave**

15:41:00 **8 Mandell, Dale Edwards, David Wright are all**

15:41:04 **9 involved, somehow none of them are on there, and**

15:41:06 **10 now it's blank and it shouldn't -- let me take care**

15:41:09 **11 of this and fix it.**

15:41:11 **12 Q. You say it should have been me --**

15:41:14 **13 A. If they all dropped their licenses, why**

15:41:16 **14 did this not go to me so I could get the forms?**

15:41:19 **15 Why not give it to me or give it to somebody --**

15:41:20 **16 Q. So --**

15:41:20 **17 A. -- but nobody got any notification,**

15:41:22 **18 nobody -- they all just dropped the case. How do**

15:41:24 **19 they just leave somebody and not --**

15:41:27 **20 Q. If you had nothing to do with the**

15:41:29 **21 policy in the beginning, why would they -- why**

15:41:33 **22 should it have been you?**

15:41:34 **23 A. These guys were always good, Dale and**

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15:41:37 **1 Dave, at service. Mandell should have given it to**

15:41:42 **2 me. He dropped his license. Why would he not give**

15:41:45 **3 it to me? They know I know the client, so let me**

15:41:47 **4 service it.**

15:41:49 **5 I can't change it for somebody else so let**

15:41:52 **6 me have it so I can service the thing, but to walk**

15:41:57 **7 away and just permanently drop the thing, it makes**

15:41:59 **8 no sense. It's just bad customer service. I**

15:42:10 **9 should have got it when they were done.**

15:42:12 **10 When they dropped it, it should have gone to**

15:42:15 **11 me. Somebody should have made sure I got it to**

15:42:18 **12 take care of it. They didn't care what happened to**

15:42:21 **13 the client after the fact -- years after they were**

15:42:25 **14 paid.**

15:42:25 **15 Q. So you did not write the policy, you're**

15:42:30 **16 not the writing agent or the selling agent?**

15:42:31 **17 A. Correct, nor did I get paid, correct.**

15:42:34 **18 Q. Okay. And what -- to the best of your**

15:42:37 **19 knowledge, what did occur with regard to that**

15:42:39 **20 policy?**

15:42:40 **21 A. Other than what's in the notes here?**

15:42:47 **22 Q. Yes. Have you had any conversations**

15:42:50 **23 with any other persons as to what may have happened**

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15:42:55 **1 on the 144 policy?**

15:42:55 **2 A. In what timeframe?**

15:42:57 **3 Q. Post purchase.**

15:43:00 **4 So let me ask you this: Are you aware that**

15:43:04 **5 the 144 policy was purchased as a no lapse policy?**

15:43:09 **6 A. No, I wasn't aware of that.**

15:43:11 **7 Q. And is it true that no lapse policy**

15:43:14 **8 means the same thing as a guaranteed policy?**

15:43:16 **9 A. If you meet the expectations, correct.**

15:43:18 **10 Q. Which it would be the same as a**

15:43:20 **11 guaranteed policy?**

15:43:21 **12 A. Correct.**

15:43:21 **13 Q. So the policy was applied for as a no**

15:43:28 **14 lapse policy, that was the understanding of what**

15:43:32 **15 the policy was. Obviously that did not occur**

15:43:36 **16 because --**

15:43:36 **17 A. They didn't pay their premiums.**

15:43:39 **18 Q. -- premiums were not met.**

15:43:39 **19 A. Right.**

15:43:41 **20 Q. Do you know anything about who's**

15:43:43 **21 handling this? Can you give me a little bit of**

15:43:47 **22 background why the policy was put in place at all?**

15:43:50 **23 A. No, I'm not sure what you're asking.**

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15:43:58 **1 Q.** Did Celia Clark ever have any
 15:44:02 **2** conversation with you about putting that 144 policy
 15:44:04 **3** in place?
 15:44:04 **4 A.** Other way around, I sent -- I had John
 15:44:10 **5** talk to -- John and Marcus talk to David and Celia
 15:44:15 **6** about this and this was a very complicated
 15:44:22 **7** transaction, so I sent it that way, not the other
 15:44:25 **8** way around. So I don't know what happened other
 15:44:28 **9** than I know the EBI people went out of business in
 15:44:33 **10** 2007, end of 2007 -- that policy was purchased,
 15:44:37 **11** what, in '06?
 15:44:39 **12 Q.** '06, yes.
 15:44:40 **13 A.** One premium payment made?
 15:44:41 **14 Q.** That's my understanding.
 15:44:43 **15 A.** So I know traditionally they would do
 15:44:48 **16** five-year payments, that was their usual structure.
 15:44:51 **17** I don't know if that's what this one was. We could
 15:44:51 **18** look at the illustration, but they paid one out of
 15:44:55 **19** five, and then the last would go away because you
 15:44:58 **20** didn't meet the obligation.
 15:44:59 **21 Q.** Okay. Now, when you say you passed it
 15:45:02 **22** onto them originally, are you talking about back in
 15:45:05 **23** 2006 or at its inception?

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15:45:26 **1 A.** It was before that.
 15:45:31 **2 Q.** And what -- what led to that? What was
 15:45:39 **3** your first introduction to the possibility of
 15:45:44 **4** whatever plan it was that utilized that insurance?
 15:45:49 **5 A.** I'm not sure what you're asking me,
 15:45:52 **6** Richard.
 15:45:53 **7 MR. MOORE:** Could we go off the record here
 15:45:55 **8** for a minute.
 15:45:56 **9 MR. TRACY:** Yeah, sure.
 15:48:04 **10** (Off the record: 3:45 p.m.)
 15:56:18 **11 MR. MOORE:** Let's go back on the record
 15:56:22 **12** here.
13 THE WITNESS: Could we take a bathroom
14 break?
 16:10:14 **15** (A recess was then taken at 3:56 p.m.)
 16:10:14 **16 BY MR. MOORE:**
 16:10:16 **17 Q.** If we could look back at Exhibit 5,
 16:10:20 **18** which is the MassMutual policy. The -- previously,
 16:11:07 **19** you testified with regard to further funding of the
 16:11:12 **20** MassMutual policy that there were limitations
 16:11:15 **21** tax-wise on what you could do, if I understand you
 16:11:19 **22** correctly, that you had funded the MassMutual
 16:11:23 **23** policy to the maximum extent possible?

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16:11:26 **1 A.** From the retirement plan in the first
 16:11:31 **2** two years.
 16:11:31 **3 Q.** And to the maximum allowable amount?
 16:11:35 **4 A.** That was my understanding, yes, in the
 16:11:39 **5** first two years, yes.
 16:11:39 **6 Q.** And can you explain to me on Exhibit 5,
 16:11:43 **7** page 9 -- page 2 of 9, it says, but it's about the
 16:11:58 **8** seventh page in, at the top of the -- it says
 16:12:03 **9** page 2 of 9 at the bottom.
 16:12:04 **10 A.** Yes. Got it.
 16:12:04 **11 Q.** And it says there's a limit on total
 16:12:09 **12** premium payments, and it shows B is -- my
 16:12:16 **13** understanding is that's actually the maximum amount
 16:12:19 **14** that the -- that -- under the federal regulations,
 16:12:24 **15** including tax, is the maximum amount that could be
 16:12:28 **16** paid in premiums on that account; is that an
 16:12:31 **17** accurate understanding?
 16:12:32 **18 A.** I don't remember seeing this page
 16:12:35 **19** before, so that's new to me. This is one plus the
 16:12:43 **20** number of years -- sum of premiums.
 16:13:04 **21 MR. TRACY:** I'm going to object. Do not
 16:13:07 **22** guess.
 16:13:07 **23**

THE WITNESS: I don't know. I don't know.
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16:13:09 **1 BY MR. MOORE:**
 16:13:10 **2 Q.** Is it possible that's actually the
 16:13:11 **3** maximum amount allowed for premiums per year for
 16:13:16 **4** this policy?
 16:13:17 **5 MR. TRACY:** Objection. If you know.
 16:13:19 **6 THE WITNESS:** I don't know.
 16:13:19 **7 BY MR. MOORE:**
 16:13:24 **8 Q.** Okay. Do you have a copy of the
 16:13:26 **9** MassMutual policy other than what we provided to
 16:13:28 **10** you?
 16:13:28 **11 A.** No, I don't believe I do.
 16:13:31 **12 Q.** Did you retain a copy of the policy?
 16:13:35 **13 A.** I would normally get a copy of the
 16:13:37 **14** policy. The original is sent to the client only,
 16:13:40 **15** so normally I wouldn't get one. The clients would
 16:13:42 **16** get a copy of the client policy, unless they sent
 16:13:45 **17** me one.
 16:13:46 **18 Q.** Okay. Okay. Did you ever get
 16:13:53 **19** information from MassMutual about what the maximum
 16:13:57 **20** premium payment per year was on that policy?
 16:14:00 **21 A.** The instructions with Mass were -- they
 16:14:12 **22** knew what we were trying to accomplish in their
 16:14:16 **23** advance case design and it was -- it was given to

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16:14:18 **1** me as this is what we've got, this is the best way
 16:14:21 **2** to do this, and that was the -- that was how it was
 16:14:25 **3** given to me. So I was under the understanding that
 16:14:28 **4** was the max you could put in.

16:14:30 **5** **Q.** But it's possible that there may have
 16:14:32 **6** been a higher max?

16:14:33 **7** **A.** It's possible, which I assume would
 16:14:41 **8** have brought the -- if you put more premium in, the
 16:14:44 **9** cash surrender value would have gone up, I assume,
 16:14:47 **10** so the tax leverage wouldn't -- you would have lost
 16:14:49 **11** some with the leverage, I assume.

16:14:51 **12** **Q.** Just another point of clarification,
 16:15:11 **13** with regard to Exhibit 26, if you have that, I
 16:15:31 **14** believe you indicated in this exhibit that you
 16:15:35 **15** reduced the face value beginning in January 2004,
 16:15:41 **16** and yet the reduction did not go over until
 16:15:46 **17** February 2005; do you have a recollection of why
 16:15:48 **18** that was the case?

16:15:48 **19** **A.** I don't.

16:15:49 **20** **Q.** Okay. Can you tell me a little bit
 16:16:33 **21** about how the commission structure works with
 16:16:41 **22** companies generally, and MassMutual and Lincoln in
 16:16:44 **23** particular if they're different? And by that, I

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16:16:48 **1** mean the commission structure -- let me tell you
 16:16:51 **2** what my understanding is.
 16:16:53 **3** My understanding is that the commission
 16:16:58 **4** that's paid to the agents is typically between 100
 16:17:02 **5** and -- between 80 and 120 percent of what's
 16:17:06 **6** typically referred to as a target amount, and that
 16:17:17 **7** target amount is some percentage of the total
 16:17:22 **8** amount of premiums that are anticipated to be paid,
 16:17:26 **9** and that in year -- if payments are made within
 16:17:32 **10** year one equaling the target amount, you would get
 16:17:38 **11** 80 to 100 percent of that, and that payments made
 16:17:41 **12** after year one go down to a very small percentage
 16:17:44 **13** of what the premium payment is annually; is that a
 16:17:50 **14** fair statement?

16:17:50 **15** **A.** You're close. There's --

16:17:52 **16** **Q.** Can you -- can you make it a little
 16:17:55 **17** clearer for us?

16:17:56 **18** **A.** Target premiums are -- commissions are
 16:18:01 **19** paid as a percentage of target, generally speaking.
 16:18:06 **20** Your numbers are right for brokered premiums,
 16:18:12 **21** career agents typically get much lower payouts so
 16:18:14 **22** it's not usually 80 to 120. It's probably 50 to --
 16:18:19 **23** it might be less.

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16:18:22 **1** The target premium is based on age, health,
 16:18:26 **2** and -- the older you are, the higher the target.
 16:18:31 **3** So if you sold \$1 million policy to a 25 year old,
 16:18:35 **4** the commission is way less than if you sold to an
 16:18:39 **5** 80 year old.

16:18:40 **6** So the older you get -- the greater the
 16:18:42 **7** risk, the greater the target, the greater the
 16:18:45 **8** commission. So the older you are, the higher the
 16:18:48 **9** death benefit, the worse your health, the more you
 16:18:51 **10** get paid. That part is all true.

16:18:53 **11** Some companies spread target premium over --
 16:18:59 **12** they pay you over seven years, some put it all in
 16:19:03 **13** year one, it varies company to company, product to
 16:19:07 **14** product.

16:19:07 **15** **Q.** With regard to Lincoln in 2002 and
 16:19:12 **16** 2003, was the target -- was the target paid out,
 16:19:20 **17** whatever the percentage of the target was, was it
 16:19:23 **18** paid out in year one at a higher rate than in
 16:19:26 **19** following years?

16:19:27 **20** **A.** To the best of my knowledge, both those
 16:19:33 **21** policies were paid out in year one. I believe that
 16:19:35 **22** to be true.

16:19:36 **23** **Q.** Do you recollect if you met the target
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16:19:38 **1** in each case for both the Mass --

16:19:40 **2** **A.** We were way beyond target, way beyond.

16:19:44 **3** **Q.** So if I understand what you're saying,
 16:19:46 **4** you're saying that premiums paid in year one
 16:19:49 **5** exceeded the target in each case?

16:19:51 **6** **A.** You only get paid off the target so --

16:19:54 **7** **Q.** Exactly.

16:19:54 **8** **A.** So if the target was 200 and you paid
 16:19:58 **9** 300 -- there's usually target premium percentage
 16:20:01 **10** and then there's an excess, and that excess is
 16:20:04 **11** usually the same as what the excess premium is on
 16:20:07 **12** future years.

16:20:07 **13** So whether you paid 600 in year one and you
 16:20:11 **14** kept 200 in target and 400 of excess, or you paid
 16:20:17 **15** 200, 200, 200, you'd get the same money, you'd just
 16:20:18 **16** wait a year for that. So that general
 16:20:20 **17** understanding, I'd say, you have a good handle.

16:20:22 **18** **Q.** Okay. And in this case, your
 16:20:24 **19** recollection is you did meet target in each case
 16:20:27 **20** and so you earned your highest possible amount in
 16:20:31 **21** year one for both of those policies?

16:20:33 **22** **A.** That's my recollection --

16:20:35 **23** **Q.** Okay.

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16:20:36 **1 A. -- but that could be ...**
 16:20:37 **2 Q.** Can you explain what a general agent
 16:20:47 **3** is?
 16:20:47 **4 A. General agent, somebody who gets an**
 16:20:52 **5 override -- so general agent owns an agency, that**
 16:20:56 **6 agency employs agents, insurance company pays the**
 16:20:59 **7 general agents, general agent then keeps some of**
 16:21:04 **8 that money for themselves and pays the rest of the**
 16:21:07 **9 agents.**
 16:21:07 **10 Q.** So with regard to the Lincoln policy or
 16:21:10 **11** the MassMutual policy, was there a general agent
 16:21:12 **12** involved at all?
 16:21:12 **13 A. MassMutual was Kim Michel, M-I-C-H-E-L,**
 16:21:18 **14 so it was the Los Angeles office, the Michel Agency**
 16:21:19 **15 of MassMutual was the general agent.**
 16:21:20 **16 For Lincoln, I think it was -- I think it**
 16:21:26 **17 was John White in Millennium Brokerage Group, but**
 16:21:31 **18 it might have been Paul Panzer, P-A-N-Z-E-R. I**
 16:21:33 **19 can't remember. It might be have been Visys, too.**
 16:21:33 **20 I honestly can't remember.**
 16:21:35 **21 Q.** And does the -- does the general agent
 16:21:37 **22** also receive a percentage of the premium paid in
 16:21:41 **23** the first year?

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16:21:42 **1 A. I have no idea. I've never been a**
 16:21:46 **2 general agent.**
 16:21:46 **3 Q.** Okay. Let's look at Exhibit Number 38.
 16:22:08 **4** By the way, is the target amount for Lincoln often
 16:22:13 **5** referred to as the break point?
 16:22:15 **6 A. I don't know that to be true. I've**
 16:22:19 **7 never heard that term, break point, used.**
 16:22:21 **8 Q.** Okay. I'm referring to Bates page --
 16:22:36 **9** and for the record, Exhibit 38 is titled Lincoln
 16:22:43 **10** SUL-4 Premium Life, Life Insurance Illustration,
 16:22:50 **11** upper right corner says Prepared By Christopher R.
 16:22:55 **12** Jarvis.
 16:22:55 **13** Okay. And I'm looking at Bates 282, and
 16:23:09 **14** midway through that last page there's a number
 16:23:14 **15** above the word software version that says,
 16:23:20 **16** B427,250.00. I've been advised that that is often
 16:23:26 **17** referred to as a break point number; do you know if
 16:23:29 **18** that's the case?
 16:23:31 **19 A. I've never heard the term break point**
 16:23:34 **20 ever.**
 16:23:34 **21 Q.** And I've been advised that that
 16:23:37 **22** basically represents what otherwise you call the
 16:23:40 **23** target amount for the policy. Does that number

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16:23:43 **1** reflect or refresh your recollection at all as to
 16:23:46 **2** what your commission may have been?
 16:23:48 **3 A. That looks really high so I would say**
 16:23:51 **4 no, it doesn't look right to me. It seems much**
 16:23:57 **5 higher than I thought the case was --**
 16:23:57 **6 Q.** What's your best recollection of a
 16:23:59 **7** range that the commission may have been?
 16:24:01 **8 A. I think earlier I said 2, 300,**
 16:24:05 **9 somewhere in that range. That was in my mind.**
 16:24:07 **10 Q.** All right. Okay. And I believe you
 16:24:11 **11** testified that for both Lincoln and MassMutual, you
 16:24:15 **12** had reached that target amount and you couldn't
 16:24:18 **13** make additional commission on the product at that
 16:24:22 **14** point?
 16:24:22 **15 A. Well, not at the -- not at the**
 16:24:27 **16 80 percent rate or whatever that number was.**
 16:24:28 **17 Q.** Okay. So if -- if there were a
 16:24:34 **18** possibility to have transferred more monies into
 16:24:38 **19** MassMutual, would you -- you wouldn't have received
 16:24:42 **20** any additional commission for doing so, would you,
 16:24:45 **21** from MassMutual?
 16:24:46 **22 A. In the first year we put more cash in,**
 16:24:50 **23 we would have bought more death benefit, I believe.**

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16:25:00 **1 If he put another \$1 million in, I might have made**
 16:25:05 **2 another 30,000, it's possible, or whatever the**
 16:25:06 **3 bonus would have been.**
 16:25:07 **4 Q.** But that would be significantly less
 16:25:09 **5** than what the original commission amount was?
 16:25:12 **6 A. Significantly less? Sure. Well, per**
 16:25:16 **7 dollar amount, but it's still more money.**
 16:25:18 **8 Q.** Sure. And what's your best
 16:25:21 **9** recollection of the amount that was involved from
 16:25:24 **10** MassMutual as a commission?
 16:25:25 **11 A. 200-ish.**
 16:25:27 **12 Q.** Okay. Let me just see if you can
 16:25:59 **13** identify that document for us, Exhibit 31.
 16:26:24 **14 A. Yes.**
 16:26:25 **15 Q.** Okay. And is this correspondence from
 16:26:29 **16** you with regard to -- did this involve all three
 16:26:36 **17** policies?
 16:26:37 **18 A. This e-mail did, yes.**
 16:26:39 **19 Q.** Okay. And by all three policies, I
 16:26:41 **20** mean Lincoln 026, Lincoln 144, and MassMutual --
 16:26:46 **21 A. Yes.**
 16:26:47 **22 Q.** -- is that correct?
 16:26:48 **23 A. Yes.**

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16:26:48 **1 Q.** Okay. And you're noting in this
 16:26:53 **2** correspondence that the two Lincoln policies are
 16:26:56 **3** not guaranteed?
 16:26:57 **4 A. Correct.**
 16:26:57 **5 Q.** Mr. Jarvis, I'll have you look at
 16:28:39 **6** what's been marked as Exhibit 47. Exhibit 47
 16:28:46 **7** purports to be a database printout with regard to
 16:28:52 **8** certain policies that were available in New York in
 16:28:59 **9** 2002 time period that had guaranteed policies. Are
 16:29:02 **10** you familiar with databases such as this?
 16:29:05 **11 A. No.**
 16:29:05 **12 Q.** Okay. Did your -- did your company
 16:29:08 **13** ever utilize such databases?
 16:29:11 **14 A. No.**
 16:29:12 **15 Q.** Okay. Do you know if you had specific
 16:29:16 **16** contact with any of those other providers other
 16:29:19 **17** than Lincoln and MassMutual?
 16:29:23 **18 A. No, I went through the broker Visys and**
 16:29:26 **19 Millennium, so whatever they found, that's what I**
 16:29:31 **20 used.**
 16:29:40 **21 What database was this again, did you say?**
 16:29:42 **22 Q.** Whatever it's titled PEP and
 16:29:50 **23** Competition.

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16:29:57 **1 MR. TRACY:** PEP and Competition.
 16:29:57 **2 BY MR. MOORE:**
 16:30:16 **3 Q.** When you were -- going back over your
 16:30:19 **4** testimony briefly about your professional history,
 16:30:33 **5** you -- I believe you indicated you were with
 16:30:36 **6** Jarvis & Mandell beginning in 1997 --
 16:30:39 **7 A. Yes.**
 16:30:39 **8 Q.** -- is that correct?
 16:30:40 **9** And then you were -- joined with OJM in
 16:30:48 **10** 2007?
 16:30:48 **11 A. Yes.**
 16:30:48 **12 Q.** And you left approximately 2010?
 16:30:55 **13** And when did you start Jade Risk?
 16:30:58 **14 A. '11.**
 16:30:59 **15 Q.** And you indicated you sold Jade Risk in
 16:31:03 **16** 2016?
 16:31:03 **17 A. Correct.**
 16:31:03 **18 Q.** And did you sell Jade Risk for -- was
 16:31:17 **19** it \$3 million?
 16:31:17 **20 A. Yes.**
 16:31:17 **21 Q.** What was the reason you left Jarvis &
 16:31:21 **22** Mandell?
 16:31:21 **23 A. Disagreement with my partners.**

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16:31:24 **1 Q.** About what?
 16:31:24 **2 A. Ethics.**
 16:31:26 **3 Q.** Okay. And what were your concerns?
 16:31:30 **4 A. I felt that client needs were secondary**
 16:31:36 **5 to income opportunities and we were not on the same**
 16:31:40 **6 page, so I was voted out and had some ugly**
 16:31:48 **7 litigation for a couple of years and was on the**
 16:31:50 **8 sidelines not talking to people waiting for my day**
 16:31:54 **9 in court.**
 16:31:54 **10 Q.** Okay. And did that litigation reach
 16:31:56 **11** resolution?
 16:31:57 **12 A. We reached resolution.**
 16:31:59 **13 Q.** Was it settled or did it go to trial?
 16:32:00 **14 A. It mediated.**
 16:32:01 **15 Q.** It mediated. Okay. Is the settlement
 16:32:06 **16** confidential?
 16:32:06 **17 A. It is.**
 16:32:07 **18 Q.** Okay. I'm not going to ask you for it
 16:32:11 **19** then.
 16:32:12 **20** Are there any provisions within that
 16:32:21 **21** settlement about confidentiality of -- or
 16:32:26 **22** non-discouragement clauses or anything to that
 16:32:28 **23** effect that you recall?

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16:32:29 **1 A. I don't recall. I don't recall.**
 16:32:32 **2 Q.** And can you -- now, when you joined
 16:32:40 **3** OJM, though, that also included Mr. Mandell; is
 16:32:47 **4** that correct?
 16:32:47 **5 A. Mm-hmm.**
 16:32:48 **6 Q.** And I presume from your previous
 16:32:50 **7** statement that Mr. Mandell is the individual you
 16:32:53 **8** had issues with with Jarvis & Mandell?
 16:32:55 **9 A. The -- the O and the M no longer**
 16:33:02 **10 needed -- no longer wanted the J around in OJM. So**
 16:33:05 **11 when we merged Jarvis & Mandell with the O'Dell**
 16:33:07 **12 Group, created O'Dell, Jarvis, Mandell, OJM, that**
 16:33:12 **13 led to a minority share in the company, so I was --**
 16:33:34 **14 I was voted out.**
 16:33:35 **15 Q.** Were there -- there were three
 16:33:38 **16** principals in that?
 16:33:39 **17 A. There were.**
 16:33:42 **18 Q.** Okay. All right. I also understand
 16:33:48 **19** you have an -- I don't believe you testified to
 16:33:50 **20** this, but I could be wrong, but you -- I believe
 16:33:55 **21** you said you had a degree in applied mathematics.
 16:33:59 **22** Do you have a background in actuarial science, as
 16:34:02 **23** well?

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16:34:02 **1 A. Yes, I do.**
 16:34:02 **2 Q.** And what --
 16:34:04 **3 A. Property and casualty actuarial**
 16:34:08 **4 science, not life.**
 16:34:08 **5 Q.** And is that a degree, or is that a work
 16:34:11 **6 experience, or how -- is it a certification?**
 16:34:13 **7 A. I was an actuarial analyst. I took --**
 16:34:17 **8 I passed tests 1, 2, 3A, 3B, 3C, and then 4A, 4B,**
 16:34:30 **9 5A and 5B. So I did not reach an associate or a**
 16:34:37 **10 fellow accreditation, there was another exam that**
 16:34:41 **11 would.**
 16:34:41 **12 Q.** And when were you involved in the
 16:34:44 **13 actuarial work?**
 16:34:45 **14 A. 1992 through 1995.**
 16:35:01 **15 MR. MOORE:** All right. Let's go off the
 16:35:05 **16 record here for a minute.**
 16:55:55 **17 (A recess was then taken at 4:35 p.m.)**
 16:55:55 **18 MR. MOORE:** Okay. We're back on the record.
 16:56:12 **19 BY MR. MOORE:**
 16:56:13 **20 Q.** Okay. All right. Mr. Jarvis, just for
 16:56:15 **21 clarification purposes, I had asked you previously**
 16:56:18 **22 about the option to put more of the monies into the**
 16:56:24 **23 MassMutual fund initially, in either year one or**

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16:56:28 **1 year two at the early stages.**
 16:56:30 **2 And I believe you had indicated that there**
 16:56:33 **3 were -- well, can you reiterate for me what the**
 16:56:36 **4 reason is why you didn't believe that could be**
 16:56:39 **5 done?**
 16:56:39 **6 MR. TRACY:** Objection, but you can answer.
 16:56:41 **7 THE WITNESS:** Previously, I stated that it
 16:56:43 **8 was the max premium, but what I believe to be true**
 16:56:49 **9 is that we were looking for the right balance of**
 16:56:56 **10 compression for tax purposes with cash available**
 16:57:05 **11 to -- the right balance of compression and**
 16:57:08 **12 long-term death benefit.**
 16:57:14 **13 And we ended on -- we came to spending**
 16:57:23 **14 1.2 million to buy 17.5 million in death benefit at**
 16:57:28 **15 the ideal spot to do that, and that's where --**
 16:57:31 **16 that's where we ended.**
 16:57:32 **17 BY MR. MOORE:**
 16:57:32 **18 Q.** So it's possible that more monies could
 16:57:37 **19 have been invested initially in the MassMutual**
 16:57:39 **20 policy even though it may not have been at the**
 16:57:43 **21 ideal optimal spot, in your opinion?**
 16:57:46 **22 A. In my opinion, we could have put more**
 16:57:48 **23 in, but if we did, you would have paid -- put**

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16:57:53 **1 another 500,000 in, we'd have another 500,000 of**
 16:57:58 **2 taxable value, so it wouldn't get the leverage John**
 16:58:01 **3 was looking for.**
 16:58:02 **4 Q.** And when we looked -- no. Strike that.
 16:58:11 **5 Previously, you referred to the guaranteed**
 16:58:16 **6 Lincoln policies that you did illustrations on or**
 16:58:18 **7 had illustrations run, and there was SUL-2 in 2002,**
 16:58:25 **8 and then in 2003, there was an illustration for the**
 16:58:29 **9 SUL-3, and then you gave some testimony about an**
 16:58:38 **10 SULLPR-4. Did you have any documentation as to**
 16:58:45 **11 that policy?**
 16:58:48 **12 A. Other than the illustrations that you**
 16:58:50 **13 showed me as --**
 16:58:53 **14 Q.** Okay. Do you recall which exhibit that
 16:58:55 **15 would have been if we can figure it out?**
 16:59:00 **16 MR. TRACY:** It was definitely --
 16:59:02 **17 THE WITNESS:** So what I do recall is today's
 16:59:05 **18 testimony there were three different exhibits**
 16:59:08 **19 between 2002 and 2003 -- or 2002 and 2004 where we**
 16:59:11 **20 showed -- where I showed John hypothetical 1035,**
 16:59:20 **21 it's the internal exchanges, and Lincoln had a**
 16:59:24 **22 different product every time that I sent that.**
 16:59:32 **23 So the company -- the company is releasing**

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16:59:33 **1 new products and changing what they're offering**
 16:59:36 **2 so --**
 16:59:36 **3 BY MR. MOORE:**
 16:59:36 **4 Q.** What I'm trying to clarify is whether
 16:59:39 **5 we -- whether we're going from your memory of the**
 16:59:43 **6 dash four or whether in fact -- off the record.**
 17:00:44 **7 (Off the record: 5:00 p.m.)**
 17:05:14 **8 BY MR. MOORE:**
 17:05:15 **9 Q.** Mr. Jarvis, in preparing for this
 17:05:16 **10 deposition, did you review any documents?**
 17:05:18 **11 A. I did.**
 17:05:18 **12 Q.** And can you tell me what you reviewed?
 17:05:20 **13 A. I reviewed some of the documents with**
 17:05:25 **14 counsel yesterday, exhibits that we provided in**
 17:05:28 **15 discovery.**
 17:05:28 **16 Q.** And were there any other documents that
 17:05:32 **17 have been produced that you have?**
 17:05:33 **18 A. No, sir.**
 17:05:40 **19 MR. MOORE:** Matthew, I'll put my document
 17:05:43 **20 requests in writing to you.**
 17:05:44 **21 MR. TRACY:** Sure, that'd be great.
 17:05:46 **22 MR. MOORE:** My understanding currently is
 17:05:49 **23 the representation there's no further documents**

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17:05:50 1 you're aware of that have not been produced?
 17:05:53 2 **MR. TRACY:** That is my understanding.
 17:05:54 3 **MR. MOORE:** Okay.
 4 **MR. TRACY:** That is correct.
 17:05:54 5 **MR. MOORE:** Then I have nothing further for
 17:05:56 6 today. Thank you, Mr. Jarvis.
 17:05:58 7 **MR. TRACY:** Thank you.
 8 **THE WITNESS:** Thank you.
 9 **The following were marked for Identification:**
 10 **EXH. 1 Amazon printout**
 11 **EXH. 2 letter dated October 1, 2002**
 12 **EXH. 3 Outline of Plan For IRA**
 13 **Assets**
 14 **EXH. 4 letter dated October 2, 2002**
 15 **EXH. 5 MassMutual policy**
 16 **EXH. 6 Inforce Basic Life Insurance**
 17 **Policy Illustration**
 18 **EXH. 7 Premium History**
 19 **EXH. 8 Lincoln policy**
 20 **EXH. 9 letter dated October 24,**
 21 **2002**
 22 **EXH. 10 letter dated October 24,**
 23 **2002**

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1 **EXH. 11 letter dated October 17,**
 2 **2003**
 3 **EXH. 12 Dealing With Insurance in**
 4 **Qualified Plans**
 5 **EXH. 13 step-by-step instructions**
 6 **EXH. 14 Comparison of Traditional**
 7 **Gifting vs. Preferred LLC**
 8 **Estate Transfer**
 9 **EXH. 15 letter dated April 14, 2006**
 10 **EXH. 16 e-mail chain**
 11 **EXH. 17 Lincoln policy**
 12 **EXH. 18 Notice of Amount Due**
 13 **EXH. 19 letter dated December 21,**
 14 **2007**
 15 **EXH. 20 letter dated January 7, 2014**
 16 **EXH. 21 e-mail dated July 8, 2015**
 17 **EXH. 22 e-mail dated July 9, 2015**
 18 **EXH. 23 letter dated October 9, 2002**
 19 **EXH. 24 letter dated October 9, 2002**
 20 **EXH. 25 letter dated November 12,**
 21 **2002**
 22 **EXH. 26 letter dated October 14,**
 23 **2003**

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1 **EXH. 27 letter dated October 23,**
 2 **2003**
 3 **EXH. 28 letter dated December 7,**
 4 **2004**
 5 **EXH. 29 e-mail dated February 26,**
 6 **2014**
 7 **EXH. 30 Insurance Illustration**
 8 **EXH. 31 e-mail dated March 5, 2014**
 9 **EXH. 32 e-mail chain**
 10 **EXH. 33 letter dated April 28, 2015**
 11 **EXH. 34 letter dated May 6, 2015**
 12 **EXH. 35 Insurance Illustration**
 13 **EXH. 36 Inforce Basic Life Insurance**
 14 **Policy Illustration**
 15 **EXH. 37 Insurance Illustration**
 16 **EXH. 38 Insurance Illustration**
 17 **EXH. 38b Insurance Illustration**
 18 **EXH. 38c Insurance Illustration**
 19 **EXH. 39 Request For Policy**
 20 **Information**
 21 **EXH. 40 2003 Annual Statement**
 22 **EXH. 41 2005 Annual Statement**
 23 **EXH. 42 Insurance Illustration**

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1 **EXH. 43 e-mail chain**
 2 **EXH. 44-46 e-mail chain**
 3 **EXH. 47 PEP and Competition -**
 4 **Technical Information**
 5 **EXH. 48 2009 Annual Statement**
 6 **EXH. 49 2007 Annual Statement**
 7 **EXH. 50 Lincoln Financial Group Life**
 8 **Servicing Agent Change**

(Deposition concluded at 5:05 p.m.)

* * *

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1 STATE OF NEW YORK)
 2 ss:
 3 COUNTY OF ERIE)
 4
 5 I DO HEREBY CERTIFY as a Notary Public in and
 6 for the State of New York, that I did attend and
 7 report the foregoing proceedings, which were taken
 8 down by me in a verbatim manner by means of machine
 9 shorthand. Further, that the proceedings were then
 10 reduced to writing in my presence and under my
 11 direction. That the proceedings were taken to be
 12 used in the foregoing entitled action.

13
 14
 15
 16
 17 DANIELLE FETZER,
 Notary Public.

18
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18
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 21 *Copies of exhibits supplied to all counsel.
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1 MR. MOORE: For the record, we would like, 58
2 to the extent it's an outstanding
3 document, to see the correspondence with
4 Dr. Repicci in any manner regarding that
5 issue.
6 MR. MOORE: And for the record, could you 72
7 produce a copy of those, please, all that
8 documentation, please?
9 MR. MOORE: And for the record, I'd like 76
10 to request any such documentation.

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